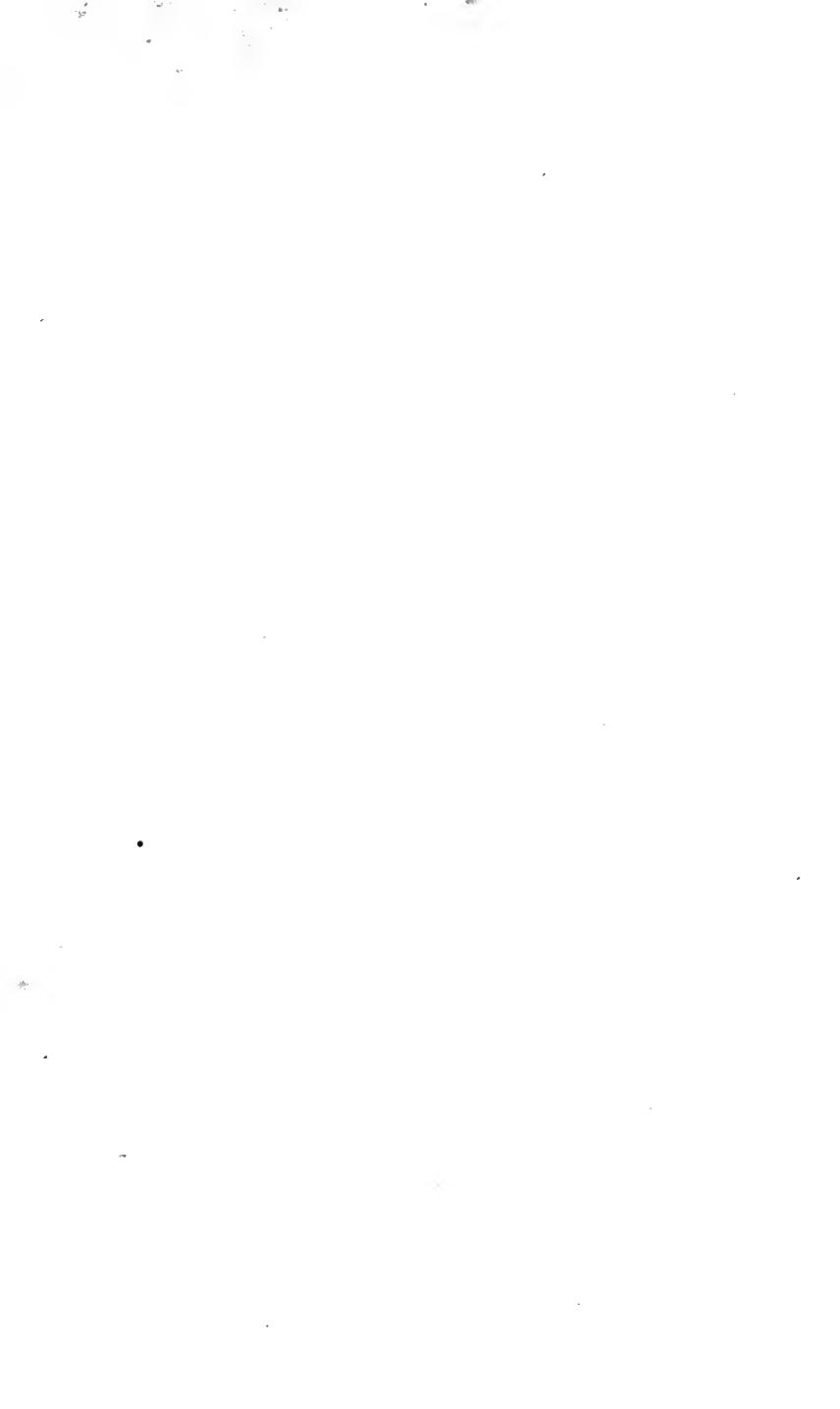


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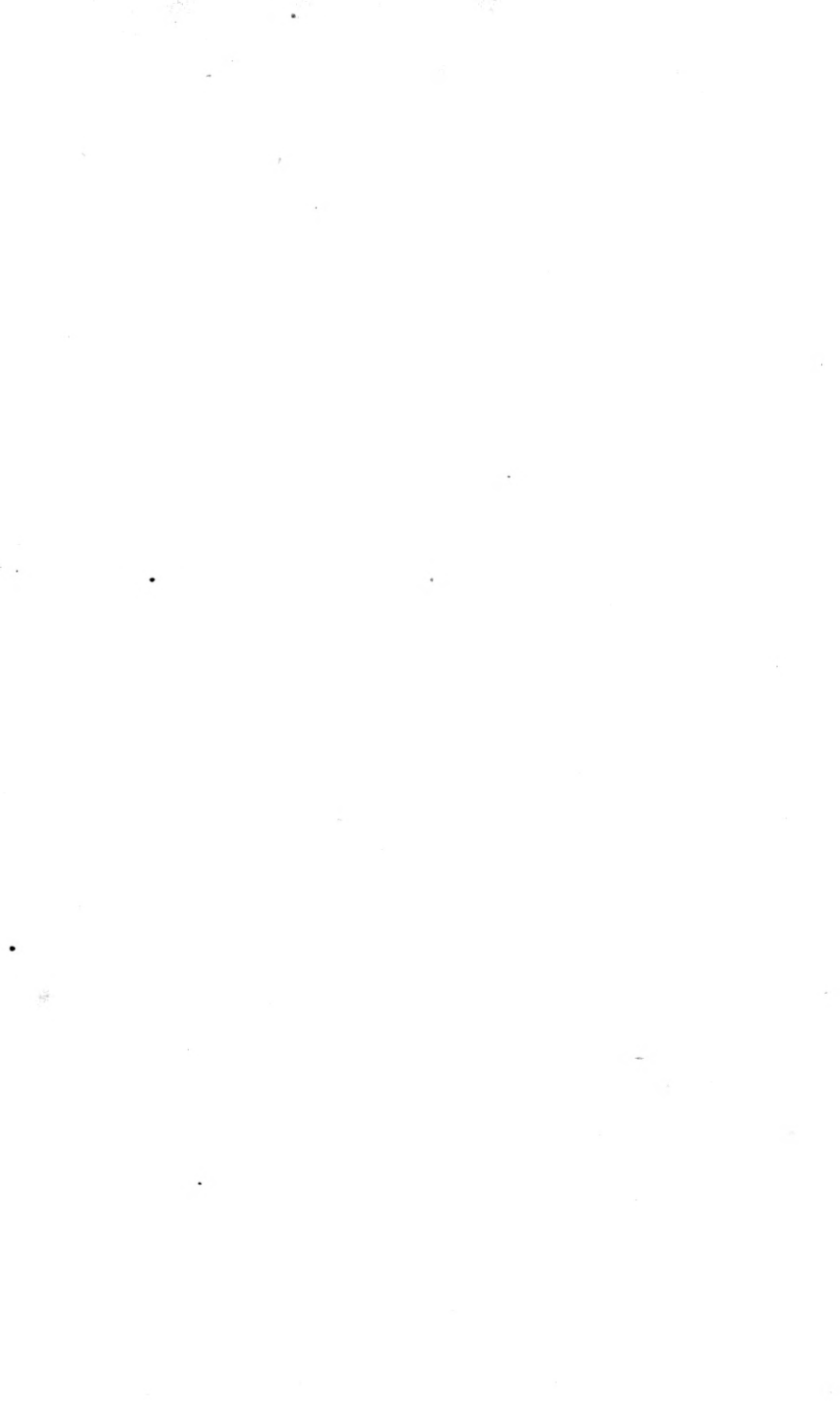
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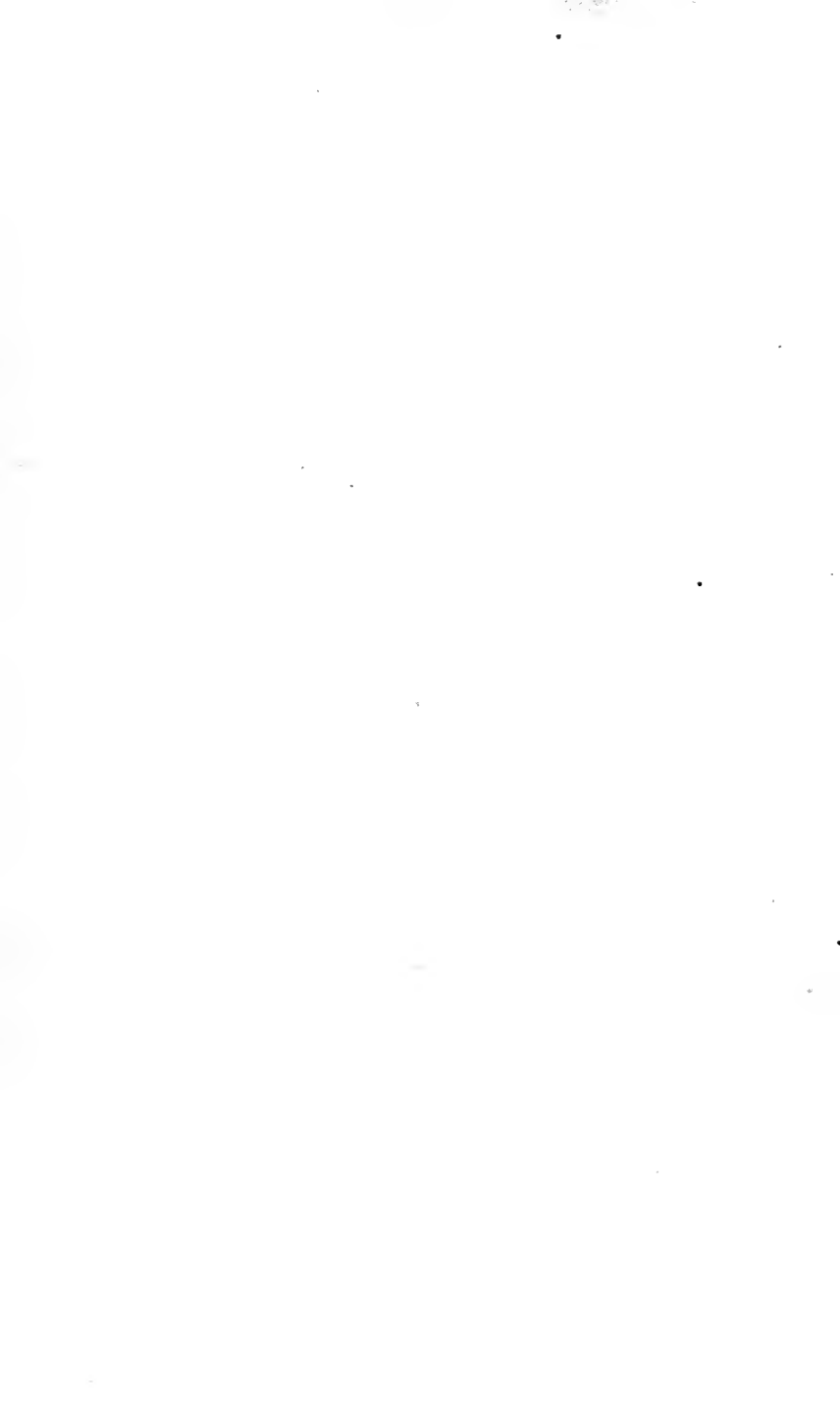


Confessional  
Unmoralized

✓







*Wm. v. Newman*  
**ACHILLI v. NEWMAN.**

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**A FULL AND AUTHENTIC REPORT**

OF THE ABOVE

**PROSECUTION FOR LIBEL,**

TRIED BEFORE LORD CAMPBELL AND A SPECIAL JURY,

IN THE COURT OF QUEEN'S BENCH, WESTMINSTER, JUNE, 1852.

**With Introductory Remarks,**

BY THE EDITOR OF

**“THE CONFSSIONAL UNMASKED.”**

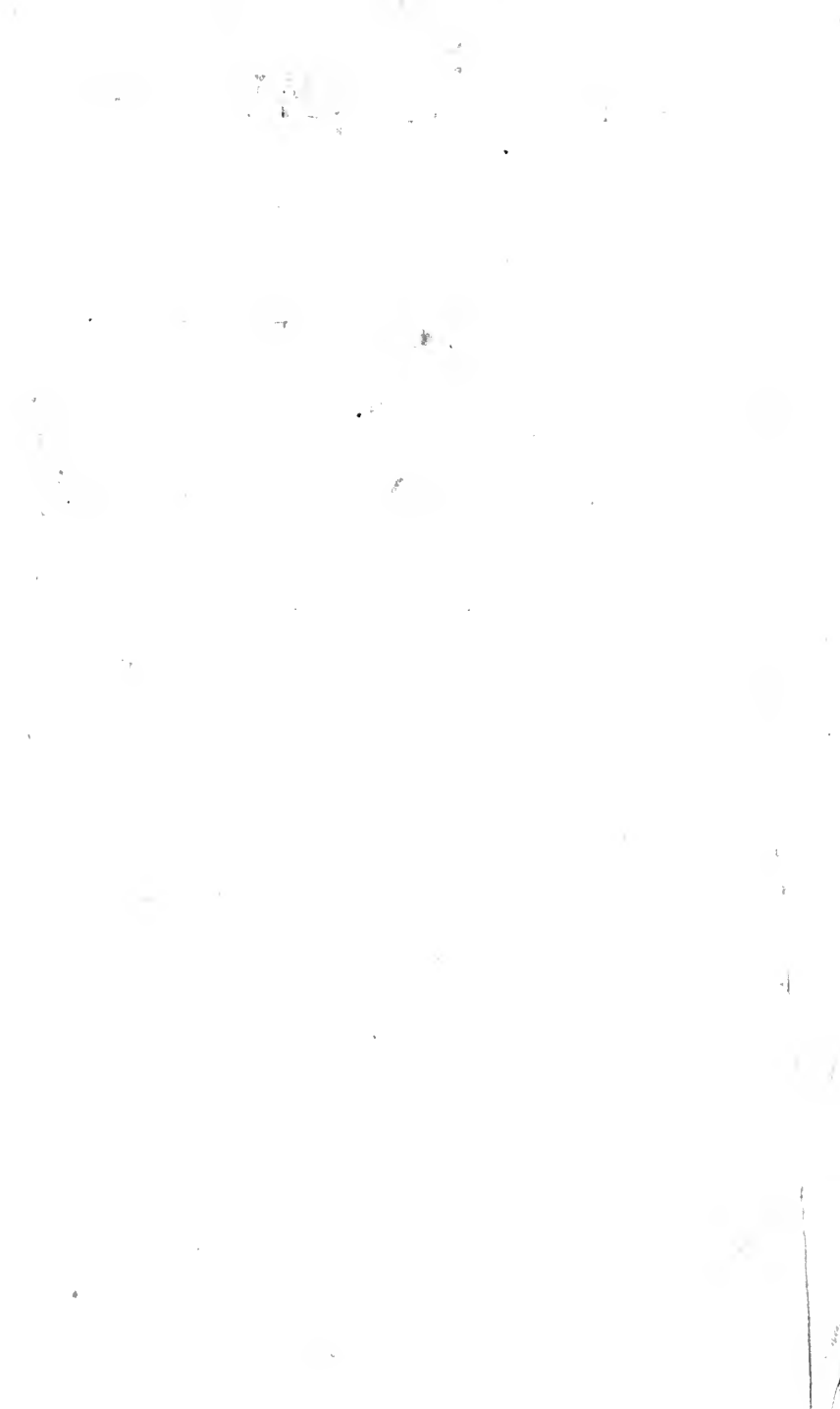
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LONDON: W. STRANGE, JUN., 8, AMEN CORNER:

AND MAY BE HAD OF ALL BOOKSELLERS.

**PRICE EIGHTPENCE.**



## P R E F A C E .

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THE melancholy exhibition which has just been witnessed in the Court of Queen's Bench (detailed in the following Report), is a fit subject for humiliating reflection to those who have been indulging the hope that human nature was gradually, though slowly, progressing towards that state of perfection, of which so many are wont to speculate, but of which it is feared the consummation is still distant.

In this remarkable trial it is self-evident that the most determined and wholesale perjury has been practised. It is not that any particular witness on one side has been guilty of it, but that the whole of the witnesses on one side or the other must be guilty of perjury the most flagrant and systematic. Even where there is no temptation to perjury, it is difficult to find half a dozen witnesses agreeing in their evidence; how numerous, therefore, must the *rehearsals* have been preparatory to this unprecedented *performance*!

It is generally the lot of one combatant to come off victorious, but in the present instance only the most mortifying and unsatisfactory results to both parties have been obtained from great exertions and much sacrifice of feeling. In corroboration of this, we cannot here do better than quote the following passage from a most able article in the *Times*, in which the pith of the controversy is condensed:—

“What has either party gained by dragging these revolting details before the public eye? The Protestant supporters of Dr. Achilli have, indeed, succeeded in painting in very forcible colours the known and admitted tendencies of the Church of Rome; they have shown how awfully the superhuman power which Rome places in the hands of weak and fallible mortals may be prostituted and abused. They have shown that, before man shall be permitted to pry into the heart and probe the conscience of his fellow-creatures, he ought to be invested with the perfection as well as the omniscience of the Deity. Little has the victim of this frightful power to hope from the boasted discipline of the Church of Rome. The confessor shrouds the shame of a brother priest under the injunction of eternal silence. The religious orders connive at the delinquencies of a brother whose eloquence can support, and whose teaching edify, the church. If scandal becomes troublesome, a change of residence removes all difficulties, and the church is willing to let the discipline sleep which cannot be enforced without casting obloquy on the priestly character, and exposing the hollowness of the system on which she builds her pretensions and from which she derives her riches. The dreaded Inquisition itself, that name of blood and terror, waxes mild in dealing with merely moral offences, and reserves for heretics penalties which she is too merciful to impose on the erring sons of the church. These things have undoubtedly been presented to us by this remarkable trial in a tangible shape; but who is there so little versed in the history of the Romish Church as to require three days of indecent details in order to convince him that, if weakness has compelled abstinence from her favourite sin of cruelty, the Church of Rome still permits to her ministers scarcely less license than of old in the indulgence of unbridled lust?”—*Times*, June 25, 1852.

For proofs of the statements made in the above extract we beg to refer our readers to a pamphlet lately published, entitled “The Confessional Unmasked,” where the principal Romish authorities are quoted in full upon this subject. In that work, from pages 32 to 40, will be found ample extracts *justifying* priests in the commission of all the immoralities which were charged against Dr. Achilli.

Many thousand copies of “The Confessional Unmasked” have been sold within the last few months, and although several EMINENT Roman Catholics have perused its pages, not one of them has ever ventured to impugn the accuracy of a single extract contained in it; notwithstanding that a reward has been offered by the Editor to any person (lay or clerical) who can prove him to be in error.

These immoralities are clearly traceable to the unnatural law which compels the celibacy of the Clergy,—a law not only contrary to the teaching and practice of the

Apostles, whose successors they profess to be, but which is also in direct opposition to the express command of God.

Dr. Graves, in his comments on the *Pentateuch* (Lev. xviii. 29,) gives the following simple explanation of the Mosaic law in connection with this subject :—

“Next to ‘idolatry’ the Jewish law seems to have condemned with peculiar emphasis, and punished with peculiar severity, ‘all kinds of impurity :’ every species of incestuous connexion and unnatural crime was punished with death. Besides, not only was forcible violation capital, as by our law, but the violation of the marriage vow. The adulterer and adulteress were condemned to suffer a public and ignominious execution. The same punishment was the consequence, where the female, though not married, was betrothed in marriage. In a word, we perceive the most anxious care to cut off every greater degree of licentiousness, and stigmatize even the least with infamy: yet never did this care degenerate into an extravagant reverence for unnatural austerity and monastic celibacy. In every rank, from the *high priest* to the lowest peasant, marriage was encouraged, and esteemed honourable: our blessed Lord indeed has declared, that some permissions, relating to marriage, granted to the Jews for the hardness of their hearts, were inconsistent with the more pure and refined morality of the Gospel; yet, notwithstanding this, we perceive in the Jewish law so strong an opposition to the usual licentiousness of Eastern manners, and so decided a superiority in this respect above the legislators and philosophers of the heathen world, and still more above their religious institutions, as tend strongly to prove, that a system so favourable to the interests of virtue, and restraining so powerfully, and yet so judiciously, the excesses of passion; a system, introduced at that early period, in an Eastern climate, and among a people accustomed to be irresistibly led by objects of sense, had higher origin than mere human wisdom; and that, to secure submission to its restraint, required an interference more powerful than mere human authority.”

Lest it should be supposed that lewd practices have only crept into the church of late years, or were confined to any particular period, we shall conclude these remarks with an extract from a work entitled “*Popery—its Character and Crimes.*” By W. E. Taylor. London: 1847 :—“The most striking proof, however, afforded of the gross and abominable debauchery of the Bishops, and Clergy, during this century, occurs in the sermon delivered by Cardinal Hugo, at the close of the Council of Lyons, held in the year 1251. The Cardinal Hugo preached to the Council at its breaking up, and in the course of his sermon thus addressed the citizens of Lyons:—‘My friends since we came to this city we have been great benefactors to you, and brought you much gain. For, on our arrival here we found *three or four houses of ill fame*; but at our departure we have left but *one*; it is true that it *extends through the whole city, and reaches from the east to the west gate.*’ So general indeed was the depravity of all the Clergy at this period that we read in the Canon Law, that ‘No Priest is to be depose for simple Fornication, because there are few to be found innocent of that vice!’”—pp. 314, 315.

In addition, we may remind our readers of the fearful immoralities practised in the Convents at the time of the Reformation, the exposure of which has long since become matter of history.

We trust that the learned Attorney-General, who has acquitted himself with such consummate ability in this case, will, in the next session of Parliament, introduce “A Bill to remove the present Matrimonial Disabilities of the Romish Clergy.”

THE QUEEN ON THE PROSECUTION OF

GIOVANNI GIACINTO ACHILLI,

*versus*

JOHN HENRY NEWMAN.

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COURT OF QUEEN'S BENCH, WESTMINSTER.

(*Sittings at Nisi Prius, before Lord CAMPBELL and a Special Jury.*)

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FIRST DAY.—MONDAY, JUNE 21.

THE ATTORNEY-GENERAL, the SOLICITOR-GENERAL, and Mr. T. F. ELLIS appeared for the Crown; and Sir A. E. COCKBURN, Mr. SERJEANT WILKINS, Mr. BRAMWELL, Q.C., Mr. ADDISON, and Mr. BADELEY for the defendant.

In Michaelmas term last the Court had granted leave to file a criminal information against the Messrs. Burns and Lambert for a libel published by them against Dr. Achilli in a pamphlet entitled *Lectures on the present Position of Catholics in England, addressed to the Brothers of the Oratory, by John Henry Newman, D.D., Priest of the Congregation of St. Philip Neri. Lecture V. Logical Inconsistency of the Protestant View.* Subsequently, Dr. Newman admitted that he was the author of the libel, and his name by the leave of the Court was substituted for that of the Messrs. Burns and Lambert.

The information set out the libel *verbatim*, with the usual inuendos. The libel was as follows:—

“And in the midst of outrages such as these, my Brothers of the Oratory, wiping its mouth and clasping its hands, and turning up its eyes, it trudges to the Town-hall to hear Dr. Achilli expose the Inquisition. Ah! Dr. Achilli, I might have spoken of him last week, had time admitted of it. The Protestant world flocks to hear him, because he has something to tell of the Catholic Church. He has something to tell, it is true; he *has* a scandal to reveal, he *has* an argument to exhibit. It is a simple one, and a powerful one, as far as it goes—and it is *one*. That one argument is himself; it is his presence which is the triumph of Protestants; it is the sight of him which is a Catholic's confusion. It is indeed our confusion, that our Holy Mother could have had a priest like him. He feels the force of the argument, and he shows himself to the multitude that is gazing on him. ‘Mothers of families,’ he seems to say, ‘gentle maidens, innocent children, look at me, for I am worth looking at. You do not see such a sight every day. Can any church live over the

imputation of such a production as I am? I have been a Roman priest and a hypocrite; I have been a profligate under a cowl; I am that Father Achilli, who, as early as 1826, was deprived of my faculty to lecture, for an offence which my superiors did their best to conceal; and who in 1827 had already earned the reputation of a scandalous friar. I am that Achilli, who in the diocese of Viterbo, in February, 1831, robbed of her honour a young woman of eighteen; who, in September, 1833, was found guilty of a second such crime, in the case of a person of twenty-eight; and who perpetrated a third in July, 1834, in the case of another aged twenty-four. I am he, who afterwards was found guilty of sins, similar or worse, in other towns of the neighbourhood. I am that son of St. Dominic who is known to have repeated the offence at Capua, in 1834 and 1835, and at Naples again in 1840, in the case of a child of fifteen. I am he who chose the sacristy of the church for one of these crimes, and Good Friday for another. Look on me, ye mothers of England, a confessor against Popery, for ye 'ne'er may look upon my like again.' I am that veritable priest who, after all this, began to speak against, not only the Catholic faith, but the moral law, and perverted others by my teaching. I am the Cavaliere Achilli, who then went to Corfu, made the wife of a tailor faithless to her husband, and lived publicly and travelled about with the wife of a chorus-singer. I am that Professor in the Protestant College at Malta, who with two others was dismissed from my post for offences which the authorities could not get themselves to describe. And now attend to me, such as I am, and you shall see what you shall see about the barbarity and profligacy of the inquisitors of Rome.' You speak truly, O Achilli, and we cannot answer you a word. You are a priest; you have been a friar; you are, it is undeniable, the scandal of Catholicism, and the palmary argument of Protestants, by your extraordinary depravity. You have been, it is true, a profligate, an unbeliever, and a hypocrite. Not many years passed of your conventual life, and you were never in choir, always in private houses, so that the laity observed you. You were deprived of your professorship, we own it; you were prohibited from preaching and hearing confessions; you were obliged to give hush-money to the father of one of your victims, as we learn from the official report of the police of Viterbo. You are reported in an official document of the Neapolitan police to be 'known for habitual incontinency;' your name came before the civil tribunal at Corfu for your crime of adultery. You have put the crown on your offences by, as long as you could, denying them all; you have professed to seek after truth, when you were ravening after sin. Yes, you are an incontrovertible proof that priests may fall and friars break their vows. You are your own witness; but while you *need* not go out of yourself for your argument, neither are you *able*. With you the argument begins; with you too it ends; the beginning and the ending you are both. When you have shown yourself, you have done your worst and your all; you are your best argument and your sole. Your witness against others is utterly invalidated by your witness against yourself. You leave your sting in the wound; you cannot lay the golden eggs, for you are already dead."

To this information the defendant pleaded that he was "not guilty." He also pleaded a plea of justification, in substance as follows:—

"1. That before the composing and publishing of the said alleged libel, to wit on the 1st of January, 1830, &c., the said G. G. Achilli was an infidel, to wit at Westminster, in the county of Middlesex.

"2. That the said G. G. Achilli was and exercised the functions of a priest of the Church of Rome at Viterbo, Capua, Naples, and elsewhere, and whilst such priest, &c., he secretly abandoned and disbelieved the peculiar doctrines of the Church of Rome, to wit, &c., and though outwardly professing chastity and purity of life, he committed the several acts of fornication, adultery, and impurity hereinafter mentioned, and by reason thereof was a hypocrite.

"3. That the said G. G. Achilli was a profligate under a cowl in that, being a member of the order of St. Dominic or Friars Preachers, and bound by vows of chastity, poverty, and obedience, he committed the several acts of fornication and impurity hereinafter mentioned.

"4. That the said G. G. Achilli had a faculty to lecture at Viterbo, of which faculty, as early as 1826, he was for certain misconduct, deprived by the superior of the order, one F. Velzi, but which misconduct was concealed and suppressed by the said superior, and is to the said J. H. Newman unknown.

"5. That the said G. G. Achilli in 1826 was a friar of the order of St. Dominic in the convent of Gradi at Viterbo, and contrary to his duty as such friar, neglected to



attend divine service in the choir, and without the permission of his superior, had frequent intercourse with persons not belonging to the said order, and so in 1827 had already earned the reputation of a scandalous friar.

"6. That the said G. G. Achilli in February 1831, at Viterbo, debauched seduced and carnally knew one Elena Valente then being chaste and unmarried and of the age of 18 years, and then and there robbed her of her honour.

"7. That the said G. G. Achilli, at Viterbo, debauched &c. one Rosa de Alessandris, then being chaste and unmarried, of the age of 28 years, and robbed her of her honour, and on the 1st of Sept. 1833, at Viterbo, was found guilty thereof, upon due inquiry before the bishop of Viterbo.

"8. That the said G. G. Achilli on the 1st of July 1834, at Viterbo, debauched &c. a certain other young woman of the age of 24 years, whose name is to the said J. H. Newman unknown, and then and there robbed the said woman of her honour.

"9. That the said G. G. Achilli, at Viterbo and in the neighbourhood, committed sins similar or worse, and debauched &c. one Vincenza Guerra then being chaste and unmarried, also another woman then being chaste and unmarried, whose name is to the said J. H. Newman unknown, and that the said G. G. Achilli was afterwards at Rome before the Court of the Holy Office, or Inquisition, found guilty of the said several offences.

"10. That the said G. G. Achilli on the 1st of January, 1835, being a friar of the order of Saint Dominic at Capua, debauched &c. a certain other woman being chaste and unmarried whose name is to the said J. H. Newman unknown.

"11. That the said G. G. Achilli on the 1st January 1840, at Naples, debauched &c. one Maria Giovanni Principe, a female child of 15 years of age &c.

"12. That the place where the said G. G. Achilli debauched the said Rosa de Alessandris was the sacristy of the Church of Gradi at Viterbo, and that the day on which he debauched the said female child at Naples was Good Friday in the year 1840.

"13. That the said G. G. Achilli being a priest of the Church of Rome, at Rome, Capua, Naples and Malta, spoke and taught against the truth of divers doctrines of the Catholic faith, to wit, &c., and also against the laws of morality, to wit the moral obligation of chastity and continence, and thereby did pervert one Luigi De Sanctis, one Fortunato Saccares, the said Rosa de Alessandris, the said Elena Valente, and the said Maria Giovanni Principe—from their belief in such doctrines and obedience to such laws.

"14. That on the 2nd of July, 1843, at Corfu, the said G. G. Achilli debauched and made faithless to her husband one Marianna Crisaffi the wife of one Nicolo Garamoni, a tailor; and afterwards, on the 1st of August 1843, at Corfu, the said G. G. Achilli publicly cohabited and committed adultery with one Albina the lawful wife of one Vincenzo Coriboni a chorus-singer, and publicly travelled about with her from Corfu to Zante.

"15. That on the 1st of May, 1848, and for 12 months preceding, the said G. G. Achilli held the office of Professor of Theology in a Protestant College, to wit, St. Julian's College, at Malta, and during that period hindered and frustrated an investigation then pending before Messrs. Hadfield and Brien, officers of the college, concerning charges of fornication and other gross immorality against one Fortunato Saccares and one Pietro Leononi, in which charges the said G. G. Achilli was also implicated, by sending away the said Fortunato Saccares to Sicily, and thereupon the Earl of Shaftesbury and others the committee of the said college dismissed the said G. G. Achilli from his said office of professor, and that the said G. G. Achilli was dismissed as well for hindering and frustrating the said investigation as for the said several acts of sin, fornication, and immorality hereinbefore mentioned, but which the said committee were then unwilling to and have still forborne to state and describe, and cannot get themselves to describe specifically.

"16. That the said G. G. Achilli, in the years 1847, 1850, and 1851, being resident in London, did attempt to seduce and debauch one Harriet Harris, then being chaste and unmarried, and did conduct himself lewdly and indecently as well to the said Harriet Harris as to one Jane Legg, one Sarah Wood, one Catherine Gorman, and one Mademoiselle Fortay; and by reason thereof, and of the said several other matters hereinbefore set forth, the said G. G. Achilli was guilty of extraordinary depravity, and was and is the scandal of Catholicism.

"17. That the said G. G. Achilli was a profligate by the commission of the said acts of profligacy, and also had been and was an unbeliever and a hypocrite.

"18. That the said G. G. Achilli, at the Convent of Gradi, at Viterbo, in the year 1836, continually absented himself from the choir of the chancel of the said Convent

during Divine service, and was a frequenter of private houses, contrary to the rules of the said order of St. Dominic, and had thereby given offence to divers lay persons not members of the said order whose names are to the said J. H. Newman unknown.

"19. That, on the 16th day of June, 1841, at Rome by the Court of the Holy Office, or Inquisition, the said G. G. Achilli was suspended from the celebration of mass and disabled from any cure of souls and from preaching and hearing confessions and from exercising the sacerdotal office.

"20. That after the said G. G. Achilli had debauched the said Rosa de Alessandris, at Viterbo of the age of 28 years, on the 1st of September, 1833, he was obliged to give the sum of 50 scudi (£10) to the father of the said young woman as damages, and that by the official reports of the police at Viterbo it is declared that the said G. G. Achilli had given the said money as such hush money to the said father of the said young woman.

"21. That, on the 1st of January 1839, in and by an official document or report of the officers of police at Naples, and being amongst the archives and documents of the said Neapolitan police, the said G. G. Achilli was reported and declared to be known for habitual incontinency at Naples.

"22. That after the said G. G. Achilli had debauched the said Marianna Crisaffi, the wife of the said Nicolo Geramoni, the tailor, on the 3d of July, 1843, the name of the said G. G. Achilli came before the civil tribunal at Corfu in respect of the said crime of adultery, that is to say that Nicolo Geramoni, by Antonio Capello his advocate, presented a petition to the Court praying that a petition presented by his said wife Marianna for alimony should be rejected, upon the ground that the said Marianna had been guilty of adultery with the said G. G. Achilli, and offered to prove the same by lawful witnesses.

"23. That the said G. G. Achilli, on the 1st of January 1850, and on divers other days, though knowing himself to have been guilty of the several offences aforesaid, did deny them all; and that the said G. G. Achilli when he committed the said offences, and thereby was in fact ravening after sin, did profess and pretend to be seeking after truth; and that by reason of the said offences the said G. G. Achilli was and is a proof that priests may fall and friars break their vows; and that by reason of his said offences, the said G. G. Achilli was and is unworthy to be believed in respect of the charges by him made against the doctrines and discipline of the Church of Rome, and the persons professing the same. And so the said J. H. Newman says that the said alleged libel consists of allegations true in substance and in fact, and of fair and reasonable comments thereon.

"And the said J. H. Newman further saith, that at the time of the publishing of the said alleged libel, it was for the public benefit that the matters therein contained should be published, because he says that great excitement prevailed, and numerous public discussions had been held in divers places in England on divers matters of controversy between the Churches of England and Rome, with respect to which it was important the truth should be known, and inasmuch as the said G. G. Achilli took a prominent part in such discussions, and his opinion and testimony were by many persons appealed to and relied on as a person of character and respectability—with reference to the matters in controversy, it was necessary, for the purpose of more effectually examining and ascertaining the truth, that the matters in the said alleged libel should be published and known, in order that it might more fully appear that the opinion and testimony of the said G. G. Achilli were not deserving of credit or consideration by reason of his previous misconduct; and also because the said G. G. Achilli had been and was, at Birmingham, Leamington, Brighton, Bath, Cambridge, Huntingdon, Winchester, and elsewhere, endeavouring by preaching and lecturing to excite discord and animosity towards Her Majesty's Roman Catholic subjects, and against the religion and practice of persons professing the Roman Catholic religion, against the peace of our said Lady the Queen, and it was of importance and conducive to the diminishing of such discord and animosity, and to preserve the peace of our said Lady the Queen, that the said matters should be published and known to all the liege subjects of our said Lady the Queen; and also because the said G. G. Achilli had improperly pretended to such subjects that he was a person innocent of the said crimes and misconduct, and that he was greatly injured by the said foreign ecclesiastical tribunals, and that he had been persecuted and oppressed by the Roman Catholic Church, and by the Bishops and authorities thereof, on account of his religious opinions, and that he was a martyr on account of his religious opinions, and by means of such improper pretences was endeavouring, and was likely to obtain,

credit and support from such subjects, by reason of their being ignorant of the said misconduct of the said G. G. Achilli, it then became and was of public importance and for the public benefit to expose the impropriety and want of truth of such pretences, and to prevent the said subjects being deceived and misled by such pretences, and to have the real character of the said G. G. Achilli and his conduct made known to such subjects and the public in general. And also because many benevolent persons and the public generally were at that time disposed to show kindness and give assistance to the said G. G. Achilli, on the ground of his having been harshly and unjustly treated by the said Court of the Holy Office, or Inquisition, and by the said superior of the said Order of St. Dominic, and on the ground that he was a person deserving of kindness and assistance, and it was for the benefit of the public that the said matters should be published for the purpose of showing that the said G. G. Achilli had been treated fairly and properly, and according to his deserts by the said Court, and the said superior, and that the said G. G. Achilli is a person wholly undeserving of kindness and assistance, and because the said G. G. Achilli had obtained, and was likely again to obtain, preferment and employment of public trust and confidence, which he was unfit to obtain by reason of the said matters, and which he had obtained, and was likely to obtain only by reason of the said matters being unknown and unpublished. And so the said J. H. Newman says he published the said alleged libel, as he lawfully might for the causes aforesaid, and this the said J. H. Newman is ready to verify. Wherefore he prays judgment, &c.”

The replication joined issue on the plea of “Not Guilty,” and replied *de injuriâ* to the plea of justification, whereupon issue was joined.

When the case was called on nine of the special jury only answered to their names. The prosecutor’s counsel then prayed a *tales*, and the jury were sworn.

Mr. T. F. Ellis, the junior counsel for the Crown, having opened the pleadings.

The Attorney-General rose and said—Gentlemen of the jury, this is a criminal information filed against the Rev. Dr. Newman, for a libel contained in a pamphlet published in the month of October, 1851, entitled, “*Lectures on the present Position of Catholics in England*, addressed to the Brothers of the Oratory, by John Henry Newman, D.D., Priest of the Congregation of St. Philip. Lecture V., Logical Inconsistencies of the Protestant View.” The prosecutor, Dr. Achilli, is an Italian by birth, and was formerly a monk of the Dominican order and a priest of the Roman Catholic Church. He has since embraced the Protestant faith, and is now the minister of an Italian Protestant church in the neighbourhood of golden-square. The defendant, Dr. Newman, as must be well known to all of you, was formerly a clergyman of our Established Church, and a very distinguished graduate of the University of Oxford. He has since become a convert to the Roman Catholic faith, of which, if he is not the most able, he is at least the most zealous priest. Before the year 1851, Dr. Achilli had paid occasional visits to this country; but having in that year escaped from the prison of the Inquisition, in which he had been confined for six months, he arrived in this country, and has resided here ever since. He is a person of considerable talent, of great self-reliance, of indomitable energy, and I ought perhaps to add that he appears to possess a strong determined will, which occasionally renders him unwilling to submit to authority. Such a person, having revelations to make respecting the dungeons of the Inquisition, in which he had been twice incarcerated, and as to the religious doctrines and practices of the professors of the Roman Catholic religion, was likely to be listened to by the public with great attention. He attended public meetings, where he excited much interest, and the statements there made when published were read with the greatest avidity. It was found that such a man was a most formidable adversary. It was thought to be a most important object, therefore, to impeach his veracity and destroy his credit; and no person appears to have addressed himself to the task with more zeal, if not with more ability, than Dr. Newman. He was aware of the temper of the English people, and he knew that nothing was more likely to scandalize them than if charges of immorality could be fixed upon Dr. Achilli. He therefore raked up all the scandals that the enemies of Dr. Achilli had ever disseminated, and gave them out in his own language to the persons whom he addressed, and then gave them out to the world in the pamphlet which he

afterwards published. It seems that Dr. Newman was engaged, in the year 1851, in giving a course of lectures to the brothers of the Oratory, and the pamphlet in question is the fifth lecture, on the "Logical Inconsistency of the Protestant view." In this pamphlet he undertook to destroy the character of Dr. Achilli, and in page 195, after introducing the subject by referring the reader to the one sided intellect of Protestants, and to the meeting at which Dr. Newman stated the chief minister of the law talked of trampling Cardinal Wiseman's hat in the dirt (the learned Attorney-General here read the extract), he proceeded in the words which formed the subject of the present information. (The learned Attorney-General here read the words of the libel.) If Dr. Newman had confined himself to general charges of profligacy against Dr. Achilli, he would not have felt himself called upon to take any step to vindicate himself; he might have attributed them to mere religious hostility, and would have treated them with silence and contempt. But it was impossible so to deal with charges of this description, so specific and minute, in which, though names were kept back, the dates and places were distinctly stated. It was quite clear that if Dr. Achilli took no notice of these charges—if he had not called on his accuser to justify the statements he had made, the world would fairly and justly have believed that the charges were true, and that it was out of the power of Dr. Achilli to disprove them. Dr. Achilli was therefore bound to apply to the law to vindicate his character, and therefore he applied to the Court of Queen's Bench for a criminal information. Before he could obtain the sanction of the Court to file this information, it was absolutely necessary that he should upon his oath give a distinct and specific denial of every one of the charges which had been brought against him. He has done so, and the information was granted, and Dr. Newman has now pleaded to that information. Until recently this anomaly existed in our law in relation to proceedings upon libels:—If the party libelled proceeded by action, it was competent to the party against whom he proceeded to plead that the libel was true, and if he succeeded in establishing that the facts charged were true, the party failed in his action. But if the party proceeded by indictment or information for the same libel, it was not open to the party against whom he proceeded to plead the truth of the charges; for such proceedings being upon the ground that the publication of a libel tended to produce a breach of the peace, it was manifest that that would be likely to result whether the libel was true or false. This gave rise to the common saying, "The greater the truth, the greater the libel." This absurdity in the law had been removed by a law introduced by the noble and learned Lord who presides on the present occasion, so that now a party is able to plead the truth of the libel, adding that the publication is for the public benefit. Dr. Newman has now availed himself of this privilege, and has pleaded a plea of justification, which contains 23 distinct charges; he has introduced the particulars of different charges, and has undertaken to prove the truth of these statements in his plea. As the plea follows the statements in the libel, it involves charges of the most serious description against the moral character of Dr. Achilli. The earliest period to which they refer is the year 1826, so that you have now to investigate the life, character, and conduct of Dr. Achilli for a period of 26 years. The plea states that in the year 1831 Dr. Achilli seduced several women, some of whom are named, and some of whom are stated to be unknown. One of these crimes, it is stated, was committed in the sacristy of a church, and another committed on a child of 15 years of age on a Good Friday. He is accused of adultery with two persons, who are named, and with being dismissed from his office in the college at Malta, for hindering and stifling an investigation into acts of fornication and impropriety in which he was himself implicated. In the years 1847, 1850, and 1851, Dr. Achilli was in this country, and similar offences are charged against him during those periods; and the whole is summed up by the statement that in the archives of the police at Naples there are reports that Dr. Achilli was known for habitual incontinence. The learned Attorney-General then proceeded to observe that he had felt somewhat embarrassed as to the course which he ought to pursue in this investigation. Under ordinary circumstances (he said) I should be desirous of anticipating all the

charges in the plea, and rebutting them before-hand; but it appears to me and my learned friends that it would be impossible to adopt that course upon the present occasion. If the charges be true, it is manifest that, from the situation of the parties, greater facilities would be afforded to Dr. Newman in Italy for substantiating those charges; and if untrue, Dr. Newman would have better opportunities of bringing witnesses from that source. We are here in utter uncertainty as to the mode in which Dr. Newman proposes to substantiate these charges. We are aware of some of the witnesses who are here, and we are prepared to rebut their testimony; but we are unaware as to how the majority of the charges are to be proved. We are, therefore, obliged to wait till the defendant's witnesses have been called, and then to call our witnesses. I pledge myself, however, among others to call Dr. Achilli himself at the proper time, and to submit him to the searching cross-examination of my learned friend on the other side. To Dr. Achilli this is a question of the deepest anxiety and importance. He is here to answer for his conduct during the last 26 years of his existence. He calmly, and I may add fearlessly, awaits the result of this investigation. He is aware of all the difficulties with which he is surrounded. He knows that nothing but the most careful attention will enable us to ascertain the credit due to the witnesses who will be called; but he is satisfied, that though he is a foreigner—I had almost said because he is a foreigner—that impartiality which invariably distinguishes a British jury will be extended to him on this occasion, and that you will join with those to whom his vital interests are intrusted in the discovery of that truth upon which he will stand or fall on this his day of trial.

The following evidence was then given:—

John Cadell Worman, examined by the Solicitor-General.—I am clerk to the prosecutor's attorney. I produce a rule of court.

Mr. Serjeant Wilkins requested all the witnesses might be sent out of court.

Lord Campbell said all the witnesses must be sent out of court.

The Attorney-General said it was of the greatest importance to Dr. Achilli that he should be allowed to remain.

Mr. Serjeant Wilkins insisted that Dr. Achilli should not be allowed to remain.

Lord Campbell said, as it was insisted on, Dr. Achilli must leave.

The rule of court for the criminal information was then read.

A Juryman here observed that it was rather unfair to Dr. Achilli that he should be removed from court.

Lord Campbell said, as the defendant insisted upon his leaving, it must be so.

Proof was then given of the publication of the libel, which was taken as read.

This was the case for the Crown.

Sir. A. E. Cockburn then rose and said—Gentlemen of the jury, in rising to address you on behalf of the defendant, Dr. Newman, it would be vain for me to disguise from myself that I have undertaken to perform a task which is calculated to inspire considerable apprehension. When I consider that the question involves religious considerations, it requires no more to make me sensible of the difficulties I shall have to encounter in obtaining, even from men of your honour, that fair and impartial hearing which is essential in order that the defendant may obtain justice at your hands. I have not performed my part in the administration of justice for so many years without having been painfully impressed, even under the purest forms in which justice is administered in this country, which are our boast, how difficult it is, when political or class interests intervene, to keep our minds free from prejudice. Still more difficult is it, when religious considerations are involved, for even the best and worthiest of men to protect themselves from that bias on questions of this description which is calculated to steel the heart and pervert our judgment, without our being sensible of the influence which is exercised over us. And in what case would there be more reason to apprehend the existence of such bias than in the case now before you? Unhappily, it has been reserved for our days, after many generations, to see the flame of religious controversy between opposing Churches again enkindled. Woe to our times that such should be so; but this is not under our control. We have now two great champions of these contending

Churches before us ; and I ask any man to commune with his own heart and ask himself are we not all prone to look on those whose opinions agree with our own as champions of the faith ? Do we not look on them with a partial eye, and look with distrust on those who differ from us ? If a man has been converted from the Roman Catholic to the Protestant faith, do we not look upon it as the effect of reason, and the light of truth and sincere conviction ? And if a doubt is thrown upon his motives, our feelings rise against it, and we become the advocates of that man's cause. But take the case of one who has seceded from our Church ; he is called a deserter and an apostate ; and how prone we are to attribute his conversion to the basest and most sordid motives by which the heart can be influenced ! These are the two cases which are now before us. The parties are two converts or apostates from the faith in which they had been brought up ; and they have become the champions of the faith which they have espoused. And on behalf of one of these I have to defend his cause before a jury consisting, perhaps, without a single exception, of those whose faith he has abandoned. I trust, however, that before God and man you will discharge your duty ; and if I feel any distrust at all, it is only because of—I had almost said the impossibility that you should discharge it. I call upon you, in the name of all that is sacred, to guard against prejudice or passion, and to come to the investigation with calm and unprejudiced minds. Consider in what condition Dr. Newman stands in this case. He is bound to substantiate these charges, I admit. He has made them from no private or personal motives ; he has no spite or vindictive feeling for making the attack. My learned friend (the Attorney-General) has suggested to you the cause. He says Dr. Achilli came forward to reveal the secrets of the dungeons of the Inquisition, and to expose the evil practices of the Roman Catholic Church, and therefore it was necessary that he should be put down, and put to open shame ; and, therefore, he says, Dr. Newman, as champion of the Roman Catholic Church, raked up all the slander which the enemies of Dr. Achilli had circulated against him, and put it into one libel, and published it to the world to destroy the character and conduct of Dr. Achilli. There was one thing, however, which my learned friend knew, and which, I think, he ought to have told you, and that is, that this libel was not published by Dr. Newman in the first instance, but every one of these charges had been published openly to the world for 15 months before Dr. Achilli took them up. They were published with far more particularity both as to time and place, and they were brought to Dr. Achilli's notice, as appears by his book in which he refers to them. For 15 months he remained perfectly silent ; he had not the courage or the boldness to answer the charges, but at last he came forward and obtained this information against Dr. Newman. I do not say that this is a justification in point of law ; but in fairness to Dr. Newman it ought to be brought forward, because it shows that he was not the inventor of the charges, and that his (Dr. Achilli's) silence might have induced the inference, and been a tacit acknowledgment that they were true. What, then, are the real motives which influenced Dr. Newman in his attack on Dr. Achilli ? Dr. Achilli quitted the Roman Catholic Church, in which he had been a priest and a monk. He came forward in 1844 and 1845, and said he was a convert to Protestantism, that he could no longer endure the abominations of the Roman Catholic Church. His language against the Church of Rome was of the strongest kind. He denounced the corruptions of the clergy, and the dissoluteness of their lives. In the year 1844 he addressed one who had been his benefactor and his friend, the supreme head of the Church which he had quitted, Pope Gregory XVI., in these terms. The passage was at page 376 of Dr. Achilli's book, entitled *Dealings with the Inquisition* :—

“Yes, the people, deceived by you, have good reason no longer to believe you. You have deceived them with your doctrines—your own, not those of the Gospel—invented for your own profit alone, not for the benefit of men's souls, to which you have even denied consolation when they could not give you silver and gold in payment for it. You deceive them with your practices, when you, so avaricious, preach disinterestedness ; you, so impure, chastity ; you, so vindictive, forgiveness ; you, so

insubordinate, submission; you, so turbulent, peace; you, so self-indulgent, temperance; you, so indolent, industry; you, so immoral, holiness. Thus, to this day, you have deceived the people, and they have ceased to believe in you, perceiving that God did not dwell in you—that God no longer spoke through your untruthful lips.”

If that was the way in which he addressed the head of the Church, it might easily be imagined how he would address the inferior clergy. He accused them of licentiousness and wickedness of the most abominable kind. Now, if these charges were true, there can be no doubt that it was important for mankind that it should be known. How, then, are we to ascertain the truth? Is the Roman Catholic, who believes his to be the true Church, to remain silent? When accusations such as these are fulminated against the Roman Catholic Church before the world, was it not the duty of Roman Catholics to come forward and vindicate the character of their Church? It would be a farce to talk of toleration if you were to hear only the attacks made by adversaries, and not to allow them to raise their voice in its defence. Dr. Newman came forward to vindicate the religion which he had adopted against a man who said the Church of Rome, like Sodom and Gomorrah, cried to Heaven for vengeance, and that it was the duty of all good men to sweep it from the face of the earth. When these things were said in sermons and in books, can you hesitate to say that it was the duty of Roman Catholics to make the best defence they could? Dr. Achilli dealt in vague and general charges; he did not condescend to specify particular facts; but yet these charges were important as coming from a man who came forward and said he was a living witness of what he stated. The question then arose, Who is this man who now comes forward to denounce the Church from which he is an apostate? When a witness comes forward in a court of justice, the first question asked is, who and what is the witness? whence comes he, and what are his antecedents? what are his motives? “Who, and what are you, Dr. Achilli, who tell us these astounding facts?” He says, “I am one upon whom these facts have made so deep an impression that I revolted against their doctrines and their hideous impurities.” If it be true that such are the abominations of the Roman Catholic system, that Dr. Achilli, with a prospect of honour and preferment, abandoned all from a sense, not only of the incorrectness of the Roman Catholic doctrines, but from disgust and abhorrence of the practices of the Roman Catholic clergy, I admit that that testimony must produce an effect upon those who might be wavering in their opinions, and still more upon those who believe that Protestantism is more correct in the sight of God, and who take an unfavourable view of the doctrines and practices of the Roman Catholic Church. But if it should turn out that instead of being a voluntary deserter from the faith in which he was born and bred, he had been expelled for his crimes—if he adopted Protestantism from the exigency of the moment, when he was expelled from the Church which had abandoned him, this would be an important element in judging of his testimony, and would utterly destroy the effect of his evidence, if true. Suppose his expulsion from the Church of Rome was not brought about by his apostacy from its doctrines, but by his own confession of crimes which would be bad in any one, but were detestable in one who had become a member of the sacerdotal calling of a Christian minister, was it not the duty of Dr. Newman to bring these facts before the world? That is Dr. Newman’s case. Dr. Achilli had denounced the Church of Rome in the language I have described. In June, 1850, was published in the *Dublin Review* the whole account of Dr. Achilli’s life, giving the times and circumstances, and challenging him to an inquiry, and stating that documents and living testimony would be produced. For 15 months he left those charges unanswered, and almost unnoticed. In 1850, when he published his book entitled *Dealings with the Inquisition*, he contented himself with a general denial of them, and took no steps to institute proceedings. The author of that libel, Cardinal Wiseman (according to Dr. Achilli’s statement), was not a person beneath his notice. Dr. Achilli, in page 76 of his book entitled *Dealings with the Inquisition*, thus noticed the article in the *Dublin Review*:—“There is the renowned Cardinal Wiseman, Archbishop of Westminster, according to the Pope’s creation, the same

who had the assurance to censure me from his pulpit, and to publish an infamous article in the *Dublin Review*, in which he has raked together, as in a dunghill, every species of filth from the sons of Ignatius Loyola, nor is there lie or calumny that he has not made use of against me." This article was written before Dr. Newman's, viz., in June, 1850, but no other notice was taken of it; though the learned Attorney-General now says, that when Dr. Newman published his pamphlet it was incumbent upon Dr. Achilli to compel him to prove his charges. Dr. Newman now reiterates those charges, for which he is responsible, and the question now is, whether he is able to justify them. Inquiries were made about Dr. Achilli, and the result is, that Dr. Newman is prepared to vindicate the truth of the charges which he published. My learned friend (the Attorney-General) has pursued a course in this case which has astonished me. Dr. Achilli knows every charge against him, the time and place, the person, and every particular. He is now in the precincts of the court, and my learned friend might have put him into the witness-box, indeed I should have expected that he (Dr. Achilli) would rush into the witness-box, in order that he might deny upon oath these charges. But that course is not convenient; it is thought better to see what can be made out, whether the witnesses will break down, whether documents can be excluded, so that Dr. Achilli may not be called.

The Attorney-General here observed that he had pledged himself to call Dr. Achilli. (Sir A. E. Cockburn had been out of court when this pledge was given.)

Lord Campbell said he thought the proper course had been pursued.

Sir A. E. Cockburn continued.— Upon that intimation from his Lordship he would admit that that was the correct course, and would at once pass to state the truth of the case. Dr. Achilli was about 50 years of age, and was a native of Viterbo, in the Roman States. In the year 1819, being sixteen years of age, he entered as a novice the Dominican convent at Viterbo. After one year, at the end of his novitiate, he became a monk of the Dominican order, and in the ensuing year a priest of the Roman Catholic Church. In one of those capacities, if not in both, he took a vow of perpetual chastity. No one can doubt that, however loose may be the practice of society in general, in the case of a priest continence is of the utmost importance, and more especially when solemn and holy vows are taken. I fully admit that in the case of a monk a charge of fornication is one of the most serious character. On the other hand, such charges are matters of grave and serious moment if they turn out to be true in the case of a man who is denouncing those very serious crimes against the Roman Catholic Church. Dr. Achilli became a priest in the year 1825, and in 1826 he was appointed Professor of Philosophy at the seminary or college at Viterbo, and remained at Viterbo, with occasional absence, till the year 1833. The libel charges that during that time he was guilty of various acts of incontinence at Viterbo. It says, "I am that Achilli who, in the diocese of Viterbo, in February, 1831, robbed of her honour a young woman of 18." Is that true or false? It might be said that if at an early period of life, when his blood was hot, he committed an offence of that kind, but had atoned for it by a life of purity and holiness, it would be cruelty to fling the charge in the face of a man who now came forward to reprove those crimes. I concur in that view; but this is only the commencement of the history, which will be brought down year by year to the present time. In February, 1831, he robbed of her honour a young woman of 18. I will produce that young woman before you. Her name was Elena Valente. She is now, and has been for some years, a married woman. She had on former occasions denounced him as the author of her ruin, and she will repeat it here to-day. Dr. Newman was not the author of this story, but it was made the subject of investigation, and punishment was awarded to Dr. Achilli upon its account. You will hear from her how he pursued her from time to time and endeavoured to seduce her, and at last succeeded. She thus became disgraced for years, till by a course of good conduct her character was retrieved. The libel charges that in the year 1833, Dr. Achilli committed another such crime; that was the case of Rosa Alessandris; and another in July, 1834. For these crimes he was tried; he confessed them, and was punished. The libel charges that "in the year 1826



I was deprived of my faculty to lecture for an offence which my superiors did their best to conceal." In that it appeared to be some mistake as to the date; but the fact was that he was so deprived. It says, "and who in 1827 had already acquired the reputation of a scandalous friar." That I shall prove. He remained at Viterbo till the year 1833, when some proceedings were instituted against him in the Court of the Bishop for acts of incontinency, and he went to Rome. He had strong friends at Rome, the matter was hushed up, and he became professor at the Minerva College, at Rome. He remained there a year, and then proceeded to Capua, at the invitation of Cardinal Selva, who invited him to go and preach the Lent sermons at Capua. There could be no doubt, that he was then, as he is now, celebrated for his talent in preaching. In the year 1835 he went to Capua, and passed his time for two or three years between Capua and Naples. There were yet two more of these cases, which form the subject of this libel. "I am that son of St. Dominic who is known to have repeated the offence at Capua in 1834 and 1835, and at Naples—again, in 1840, in the case of a child of fifteen." By his own confession he admitted that he committed these offences. The name of the girl was Maria Giovanni Principe, now married to a person named Belisario. I shall prove to you that upon this girl he made several attempts, that he got her in a room of the chapel of a convent, that he got her with child, and that he was obliged to make compensation to the father. The girl is married now, and is a respectable woman. Her mother accompanies her here; you will hear her evidence, and see whether she is worthy of credit. This charge is not made now for the first time, but was proved before the Ecclesiastical Court, and was known to Dr. Achilli himself. It seems that in the year 1839 he separated from the Dominican order, to which he had been up to that time attached. Whether the separation was complete there might be some doubt, but he secularized, as he thought. He went on preaching in Capua, but such was the scandal at Naples and Capua from these acts that it was necessary to bring these things before the Superior Court, and he was sentenced to three years' suspension from his functions, and seclusion in one of the more rigorous religious houses. This did not suit Dr. Achilli, and he began to meditate secession. The fame of these proceedings came to the ears even of the Court of Rome. He was demanded from Naples, and brought before the Court of the Inquisition, and charged with all these scandals. I have the record of the proceedings here—not, indeed, the original record, but an authenticated copy. It contains the confession of Dr. Achilli himself, who was sentenced by the Ecclesiastical Court of the Inquisition to perpetual deprivation from his ecclesiastical functions, from hearing confessions, &c., and to three years' seclusion in one of the more rigorous religious houses. He retired to the Convent of Nizarro, where three years were to be passed in doing penance. But this did not suit him. In his book he said he went to Nizarro to arrange his private affairs. He did not stay at Nizarro, but went off in haste to Ancona, and meeting with a gentleman, he got his name inserted in his passport, and went with him to Corfu, which is in the dominions of this country. He now openly secedes from the Roman Catholic religion, and professes to have adopted the pure truth of Protestantism. At Corfu he opened what he called an Italian Church, but there he soon got into a scrape, "and made the wife of a tailor faithless to her husband." The tailor had separated from his wife and had been adjudged to allow her 2s. a week as alimony. But he distrusted the fidelity of his wife, and watched her house at night with the view of clearing up his suspicions, and one night, at half-past 11 o'clock, he saw a person come there, not in the dress of a priest, but in an ordinary dress. He seized hold of the party, and holding up a light, he found that it was Dr. Achilli. The tailor then appealed to the Court, but the affair was compromised, and it was agreed that the husband should pay no more money, and that the wife should be relieved from the charge. We had this man here, but he was obliged to leave England, but we have a man who saw the whole of the transaction, and he will prove that Dr. Achilli was that man. I have also the transcript of the proceedings, which will establish the assertion made in the libel, that "your name came before the Civil Court of Corfu for your crime of adultery." After this scandal he went to Zante.

At that time he made the acquaintance of a chorus-singer named Coriboni. The wife of this man was a woman of notoriously bad character, and combined prostitution as a means of getting money with the profession which her husband carried on. Dr. Achilli took these people into his suite, and travelled with them to Zante, where he was desirous of establishing this reformed Italian Church under that mission which he boasts in his book of having received from Heaven. He there applied to a gentleman named Reynolds, who held an office of respectability and trust in the Customs. Mr. Reynolds was disposed to further the object, and became a subscriber. Dr. Achilli obtained subscriptions, interested the Vice-Governor of the island, Colonel Ford, and having obtained considerable subscriptions, the church was opened. Mr. Reynolds happened to know something of this Madame Coriboni. Her character was open and notorious, and yet, to Mr. Reynolds's astonishment, when he went to the church, he found the wife officiating as pew-opener, and the husband as clerk. He thereupon remonstrated with Dr. Achilli (I have Mr. Reynolds here, and will put him in the box), upon which Dr. Achilli assured him that the woman was a second Magdalen, and intended to lead a pure and virtuous life. Mr. Reynolds hardly knew what to make of this; but it so happened that his house was opposite Dr. Achilli's, where there was a laundry in which the woman worked. He thus had an opportunity of seeing Dr. Achilli toying with this Magdalen in a way not at all satisfactory in a minister of religion. This happened more than once, and there was always that degree of familiarity between the parties which naturally led to unfavourable conclusions. From what was seen going on between Dr. Achilli and this woman it became necessary to close the blinds of this and the adjoining houses, the ladies in which were much scandalized. Dr. Achilli was seen walking arm-in-arm with this lady, and sitting at table with her, and no doubt was left that a criminal intercourse subsisted between them. Mr. Reynolds and Mr. Ford remonstrated, but as Dr. Achilli persisted in keeping her in his house, they would have no more to do with him, and the congregation was broken up. Dr. Achilli then went to Malta, and came to England. At that time an attempt was being made to establish a college at Malta. A body of gentlemen, at the head of whom was the Earl of Shaftesbury (a nobleman who was at the head of every benevolent undertaking which was calculated to promote the moral, social, and religious welfare of mankind), were endeavouring to establish a college there for general instruction, and it was arranged that Dr. Achilli should be the theological professor at the college. He goes to Malta, where he is associated with others, two of whom were priests, named Saccares and Leonini, who had been somewhat too hastily adopted at this college. A person named Kaossi, who had been an Armenian priest, and fled from the Roman Catholic authorities, was a member of the college, and he had not been long there before he made charges against his fellow-labourers, involving Dr. Achilli, as well as Saccares and Leonini. Dr. Achilli was only so far connected with them that he was said to have connived at their conduct. These charges were by Messrs. Hadfield and Watt transmitted to London; and as Saccares and Leonini, as well as Dr. Achilli, denied the charges, the committee said that Kaossi should be called upon to prove his charge. The charge consisted of a confession, which Saccares and Leonini denied altogether. The consequence was that Kaossi was looked upon as an inventor, and was about to be dismissed, when numerous persons came forward and gave a different account of the affair, which led the Messrs. Hadfield and Watt to appoint a day to resume the inquiry. All this was known to Dr. Achilli, who knew that the board in London wanted inquiry into the charge which related to introducing women into the college. But, to the astonishment of all, Dr. Achilli took upon himself, without communicating with the authorities at Malta or London, to send Saccares into Sicily to distribute bibles there. This was a mere pretext to get rid of him. This put an end to Saccares' connexion with the college, and the board in London dismissed Dr. Achilli from his office for having, in defiance of propriety, sent Saccares away. This committee, consisting of gentlemen of the highest respectability, the Earl of Waldgrave, the Rev. R. Burgess, and others, dismissed him after investigating the matter. Dr. Achilli, in 1850, came to Eng-

land, when he began that course of lecturing and writing, and holding up to hatred and disgust the doctrines and practices of the Roman Catholic Church, which he has since pursued. In the year 1849, being at Rome, during the time of the Revolution, a time when anarchy prevailed, he there married a lady named Heley, according to the rites of the new Roman Catholic Church. Whether or not that was consistent with his vows of perpetual chastity was a question for himself. At the first house in which he lived in London there was a maid servant named Harriet Harris. He made use of every effort to seduce that young woman when she brought him up water, and tried again the next day. Mrs. Achilli then arrived in London, and he desisted from his attempts. Though not successful with her (Harris), he was successful with another, named Jane Legg. He took a house at No. 11, Shaftesbury-terrace, Pimlico. Jane Legg was there, she yielded to his solicitations, and became with child. But I believe not only Dr. Achilli, but a friend of his also, who was there, had connexion with her. She went away, and had a child, who died of the small-pox, and it appeared that though Dr. Achilli never did anything for her, he never denied that he had had to do with her. He had another servant, Sarah Wood, whose reluctance and resistance he overcame; and another, named Catherine Gorman, with whom he did not succeed. If these witnesses are to be believed when you see them in the box—if when a married man and removed from those demoralizing examples which he witnessed when in the convents of the Dominican order—having left that polluted atmosphere for the purer atmosphere of the Protestant Church—if having allied himself in what he believed to be a matrimonial alliance with a young lady who devoted herself to him, he endeavoured to make every woman the instrument of his lust, that will throw some light upon his conduct, and will, I think, lead you to believe that these charges are well founded. And if these things be so, I ask whether those whose Church is denounced by such a man are not justified in holding them up to the people of this realm, who are to judge of the truth of his representations in order that they may judge of the credit to be attached to the evidence of such a witness?—that they may judge whether the Catholic Church is that foul nest of pollution and crime, or whether these things are not published by him in order to conceal the reasons and the fact of how he ceased to be a member of that Church? Having been brought to justice and exposed to penance and contrition, he takes care not to bring forward this in his narrative, for if he did he knew that no credit would be attached to statements coming from so foul a source. Whatever may be the zeal of the Protestant Church (and I rejoice to see it burn brightly when occasion requires), I trust it will never lead us to be guilty of denying to others the free, full, and unfettered exercise of their religion, or the free expression of their opinions, or to prevent them from confuting malignant and wicked accusations. [The proceedings of the Court were here interrupted by the shrieks of a gentleman in the gallery who was taken in a fit.] It was under such views alone Dr. Newman had come forward, feeling that he was justified in ascertaining who and what Dr. Achilli was, and, if he had been guilty of improper conduct, to show him in his true colours. I say that the cause of truth demands that in these matters of religious opinion and controversy—matters in which all mankind are deeply interested—truth should be on both sides adhered to, that evidence should be sifted, and when it rests on the character of the witness that that character should be sifted and judged of by those who are interested. On the other hand, I admit that when, with a view to silence an adverse witness, falsehoods and crimes are charged which are known to be untrue, that is a case in which reproof cannot be too severely heaped. As to this case, you will see that Dr. Newman has not invented them. As to all that is substantial I shall make out these charges, and then it will be for Dr. Achilli to see what answer he will make. I should certainly have liked to have heard in the first instance what he would say. Dr. Newman will be upheld by the conviction that he has not acted from any vindictive motive towards Dr. Achilli, but to repel the foul accusations which had been brought forward against the Church of which he is a member. I shall have another opportunity of addressing to you a few words, but I trust that you will now for-

get, for the moment, whatever religious opinions you may entertain on the one side or on the other; look on this case as one indifferent; let not prejudice or passion mingle with your judgment; bringing calm and dispassionate attention to the witnesses; and if you should be of opinion that Dr. Achilli is not guilty, Dr. Newman will submit to your verdict against him; but if you believe the witnesses, and are satisfied by the documents that Dr. Achilli is an impostor, and that the charges which he has brought against the Roman Catholic Church are unfounded and calumnious, do justice to these parties, and enforce it by your verdict.

The following witnesses were then called by the defendant:—

Eleana Giustini an Italian woman, married, and about 40 years of age, was the first witness called. She was examined by Mr. Bramwell, and gave her evidence in a very clear and intelligent manner, without any appearance of hesitation. She answers to the description of a respectable poor person in this country, and though sufficiently plain-looking now, was probably a comely girl at the time to which her testimony chiefly referred. Her evidence was given in Italian, and translated to the Court and jury by interpreters engaged on behalf of either party. She said—My husband's name is Vincenzo Giustini, and I was married two years ago; my maiden name is Valente, and I have lived all my life at Viterbo. I know the Dominican Convent there, and remember Dr. Achilli, who was one of the monks. I went to the convent, when he called me, about 23 years ago, more or less. I was then about 17 or 18.

Mr. Bramwell.—Did anything happen between Dr Achilli and yourself?

Witness.—That for which he sent for me. He deflowered me. I was a virgin at the time. It took place in a part of the sacristy. I had been alone with Dr. Achilli in other places before while in the service of Signora Gentili, with whom Dr. Achilli was acquainted. She resided in a country-house near Viterbo, and Dr. Achilli had been there on a visit during the month of October. He had taken liberties with me previously when I walked out with him alone at his invitation. It is the custom in Italy when any one is in service for visitors to give a present, and Dr. Achilli called me to the convent for that purpose. That was the first occasion on which he had criminal intercourse with me. I consented to what took place for I was there alone and was obliged. (Sensation.) The act took place again some time after, and was continued in the convent, and twice besides in a house in Viterbo. I spoke to him on the sin of it.

Mr. Bramwell.—What did he say?

Witness.—That there was no sin. I told him that it was a hellish matter, but he said, not at all; otherwise hell would be quite full. (Loud laughter.)

Cross-examined by the Attorney General. I arrived in London on Thursday last, and left Viterbo six months ago, on the 23rd of this month. In the interval I have been at Paris, Dover, and some other place between Dover and this. A lady named Signora Rosina de Berna was with me and my husband. I can't say what street I lived in at Paris, but I was there for three months, after which I came to Dover—I think in May. I lived in Dover close to the sea; I can't give the address, but the lady who was with me knows all about it. There were other witnesses in the cause in Paris and at Dover besides myself. Two of them accompanied me from Paris, Joanna Principe and her mother. They lived in the same house with me at both places. I had my instructions from a lawyer whose name I know not, to come over here, and I had the approval of my curate before I left.

The Attorney-General.—Did you ask his leave to come?

Witness.—He told me I ought to come here. His name his Dr. Giuseppe Ramazzi. I talked with the other witnesses in Paris. I told them what had happened to me, and they told me what had happened to them. (Laughter.) I did not know them previously. I have seen other witnesses beside those in London, but not in Paris or Dover. One was an English gentleman, named Reynolds. I have not talked with any priest since my arrival in London. I had only known Dr. Achilli a month before he seduced me, and he was then called Father Achilli. Signora Gentili's villa was about two miles from the convent, and Father Achilli went there to remain a month as a visitor.

There were two other members of the family, both men, and I was the only maid. Not more than five or six days elapsed before he began to take liberties with me. The villa was in a retired situation, and when he first walked out with me he solicited my chastity. He took me to show me bird shooting at a place where two members of the family were. This I did not see, for I did not reach the spot. He took me to a hut which was not occupied, but there was a shepherd passing near with his flock. I went in with Dr. Achilli, who told me that that was the shooting place, and he then solicited my chastity, which I denied him, absolutely believing it to be a sin. I returned home in his company, and said nothing about what had happened to Signora Gentili, but I told it to my confessor when I went to confession some five or six days after. He was not a Dominican, but a priest of the district called Farini. I did not walk again with Father Achilli in the country, but during his stay he repeated his solicitations in the house of my mistress. He told me one night not to go to bed but wait for him and he would come to see me.

The Attorney-General.—Why did he say so?

Witness.—Because he said he had to get by heart a panegyric to St. Cecilia which he had to deliver some days after. I went to bed, and he came and knocked at the door, which I had locked but I did not answer. He knocked gently. My room was far away from Signora Gentili's which was near that of Dr. Achilli. I said nothing to her in the morning, but showed myself disturbed and wishful to leave the place. The Signora did not ask me any questions, and I gave her no reason for leaving, as I had only taken the situation for a month. Dr. Achilli had left for his convent before me. My father and mother were living at the time in Viterbo, and I went home to them, but I did not mention the subject to them. The affair of the convent happened some time in November, but I do not remember the day, and I had not seen Dr. Achilli after my return till then. It took place about 9 or 10 o'clock in the morning, and he was waiting for me in the sacristy, which is off the chapel when I arrived. I saw him beckoning to me with his hand. [The witness pointed out the relative positions of the sacristy and the chapel, and showed the way in which the father beckoned.] I suppose it was more convenient for him to have me in the sacristy. It is an open room, where the monks put on their vestments.

The Attorney-General.—Did he use force?

Witness.—No. He led me into another room by some stairs. He took an inkstand and a sheet of paper with him, and said "Come up," whereupon I followed. When I arrived in the room I ceased to observe objects. I was frightened and did not know what was to be done to me, but I did not lose my senses. I could not now tell all the particulars, for it is so many years ago, but all I know is that at that moment he dishonoured me. I resisted, but do not remember if I cried. I was, however, in a perspiration. After the act he sent me away.

The Attorney-General.—Did he give you any presents?

Witness (sharply).—He gave me a silk handkerchief, which was older than himself. (Great laughter.) I went home, and the next day went to confession to the same confessor to whom I confessed before. I began to cry, and he then told me, "I knew you were in the hands of a rapacious wolf in sheep's clothing." (Sensation.)

The Attorney-General.—Did you say anything to your mother?

Witness.—No; because the confessor prohibited me from saying anything to anybody, on account of Achilli being an ecclesiastic. (Sensation.) I showed the handkerchief to my confessor. The second time the act did not take place in the convent. There were living in Viterbo relations of Dr. Achilli, and he sent for me there.

The Attorney-General.—How came you to go to him again after this treatment?

Witness (with much animation).—I felt I was dishonoured, therefore I went. It is very well known that a little affection springs out of such an event. I became so fond of him that I regretted very much his going away from the place. I do not know the house, but he took me into a room, where the act again occurred. He was seated when I went in, and he made me sit also. What occurred after who can recollect? it is so long since. I must have remained about an hour. The next time it happened was in the convent. I ceased to go

to the old confessor after that, and did not go so often to confession. When I confessed, however, I said all, for I could not conceal my sin. I cannot tell the name of the second confessor; he is probably dead, as the first is, I did not mention the name of Dr. Achilli, for the custom is to mention the sin, and not the sinner. (Sensation.)

The Attorney-General.—How came you to mention the name of the sinner to the first confessor, then?

Witness.—Because the first was living near the villa, and might suspect some of the family, and I therefore chose to tell the real author of it. Dr. Achilli had told me, "When you can come to see me," and when I could I did. The second time the act was committed in the convent was in the same place as the first. If force was used on that occasion, I suppose it was on his side, for it is not permitted to the woman to say, "Here I am." A girl as I was I could not ask him. In confessing myself I said that I had sinned with an ecclesiastic in the chapel. It may have occurred more than four times. The second time I went to the house of his relatives it was because he sent for me.

The Attorney-General.—Did he use force on that occasion?

Witness.—The first time he forced me, but after that he used the caresses which are usual towards women. (Laughter.)

The Attorney-General.—Did he give you any other presents besides the silk handkerchiefs?

Witness.—Yes, and beautiful presents they were—three sausages! (Great laughter.) The sausages were given at the same time as the handkerchief. (Continued laughter.)

The Attorney-General.—Did he ever give you any other presents?

Witness.—He often promised, but did not perform. He said he would give me an umbrella, but he has never done so. (Laughter.) I never said a word about it to my mother. I have never mentioned it to anybody except my confessors, but once Salvatori Larosi, a chemist, asked me, "Is it true that Father Achilli has deflowered you?" I answered, "Who told you that?" and he said, "himself." The chemist said so, as far as I could judge, because he wanted to arrive at the same end. This was many years ago, and he is now dead. Dr. Achilli did not remain long at Viterbo after; perhaps about a year. My mother has only lately been informed of the fact; and then I did not tell her anything beyond that I was coming here on a trial.

Being pressed on this point, the witness said sharply, "You would not have me publish my own crime."

The Attorney-General.—Who gave you money to come over here?

Witness.—No one has given me money. I have been found in everything necessary by Signora Rosina Gentili, for I had nothing myself. That lady is a Catholic.

Re-examined by Mr. Bramwell.—My curate was the first who spoke to me on the subject of this case. He sent for me and asked me if I knew anything of Dr. Achilli. I answered, "Why do you ask me?" and he replied, "Never mind." I then said, "Never mind! but what for? Is it for my own good?" He said, "It is for the honour of the Holy Mother Church—for the honour of God." I then said, "If you will come to the confessional, I will tell you," but he would not. He said that to the confessional he could not come, but I was to speak there and then without shame. I then began to say something, and he said, It does not belong to me; you must come to the Vicar-General. An intimation came to me accordingly, and I saw the Vicar-General with a Dominican monk from Rome and another monk belonging to the Convent of St. Filippo, of Viterbo. They told me I must go to Rome, and I went. I saw there an English lawyer who could not speak Italian, and I made no statement before him, but I did before the Vicar-General, and I told him all that I am saying now. I have not seen Dr. Achilli since he left Viterbo. He never said to me, "Good bye," or even as much as "Go to the devil" (laughter), and I knew nothing of it till he was gone. I have been in a convent of nuns for three years, and went to try whether I had a vocation for the life or not—whether the Lord called me to it. Finding that I had no "call," I came away. Of my own

will I did not go, but from the strong advice of my confessor, who seeing there was some danger of my becoming a disreputable woman, induced me to go to the monastery. (Sensation.)

The Rev. Mr. Grote, a Roman Catholic priest, residing at Broadway, in Worcestershire, was the next witness called.—He spoke English well, and, in answer to questions put by Mr. Addison, said, I am thirty-two years of age, and was educated at the Lyceum College of Viterbo, of which town I am a native. I remember being a student there in the Latin Grammar, and was about eleven years old when Dr. Achilli was professor of Philosophy in the college, being also a priest in holy orders and a Dominican monk. His reputation at that time was very bad, but I do not know why. There is a Bishops' Court at Viterbo, over which the Vicar-General presides. I have been his secretary, I was in Viterbo when Dr. Achilli left it, which took place suddenly. He escaped, or was not to be found. (Laughter.) All the papers of the Bishops' Court and the police were burnt during the last revolution.

Cross-examined by the Solicitor-General.—I can't say with certainty when it was Dr. Achilli left Viterbo, but I believe it was in 1834, and I must have been about thirteen years of age then. I received a subpoena to appear in this case about the beginning of last December. Mr. Flannigan, an Irish priest, first spoke to me on the subject in Broadway, Worcestershire, where I am a priest. I have been abroad since collecting evidence. I saw Rosa de Alessandris once in Rome, and once afterwards at Viterbo. I neither gave nor offered her nor anybody else money in reference to the subject. I have seen a great many people at Viterbo on this subject. None of the witnesses who have come to this country are here on my persuasion. The persons I saw came to me spontaneously, for I did not seek any of them. I went alone, and put myself in communication with the Vicar-General Casamicono. I also knew a monk named Zopini, a Dominican. I know the witness Giustini, I saw her in Rome. The Vicar-General was the first person I applied to at Viterbo, but every day I had people coming to me. Dr. Newman employed me to go over to Italy. The Vicar-General and Zopini expected me, and I remained at Viterbo about 15 days. I was in Rome seven or eight days, but during that time communicated with none of the ecclesiastical authorities. I saw Mr. Harding and Mr. Gordon, and another whose name I do not remember.

Cross-examined by Mr. Bramwell.—I saw at Viterbo the chief of police. I told Rosa de Alessandris to come to England, but she refused, being in the family way.

[An attempt was here made to put in evidence a copy of a private memorandum by the chief of police, which it was understood supplied the information lost in the destruction of papers that took place during the Revolution; but, though the copy so tendered was authenticated by the city arms of Viterbo, it was held inadmissible.]

Sophia Maria Balisano was the next witness called.—She is a middle-aged woman, belonging, like Giustini, to the humbler classes, and gave her evidence in a quick, rapid manner and with a good deal of gesticulation. She was examined by Mr. Baddeley, and replied in her native language, which was thus rendered by the interpreters,—I shall have been married eight years on the 11th of November next, and my maiden name was Principe. I was twenty-eight years of age when I married, and before that lived at Naples. I knew Dr. Achilli there, and became acquainted with him when about thirteen or fourteen years of age. I at that time frequented the church of St. Peter for prayer, and first saw Dr. Achilli in the sacristy of that church, who was Prior, when I went to make a small offering of money at the images of one of the saints. At first he said nothing, but I went one day alone, and he shut the door of the sacristy and embraced me closely. I wished to leave, but he prevented it, and dishonoured me. (Sensation.)

Mr. Baddeley.—Did he use violence to effect his purpose?

Witness.—Yes; he threw me on a kind of sofa. I tried to get away, and struggled hard with him. I was then a virgin, but in consequence became

pregnant. Before my confinement my father and mother went to Dr. Achilli; I, however, was not with them. I remonstrated with him at the time, and said it was a harm and an evil he was doing; but he replied, that it was no harm—that it was rather a good than an evil.

Mr. Baddeley.—Was this in the sacristy?

Witness.—Yes. I did not return from the church by the same door at which I entered.

Mr. Baddeley.—Did he make you any presents?

Witness (with great contempt).—A bit of sweetmeat from time to time. (Great laughter.) The thing produced great distress in my family, and my father died from illness arising out of it

Cross-examined by the Attorney-General.—I left Naples on the 16th of January, and my mother accompanied me to Civita Vecchia. A Dominican Father named Scrouli induced me to come to England.

The Attorney-General.—How did he know you had anything to say on the subject?

Witness.—Because I went to the tribunal at Naples, and it was a well known thing. The trial took place in Naples about 13 or 14 years ago. In coming to this country everything I have required I have had, but no money, for it was not necessary. I came alone a great part of the journey, but it is a Phillipian Father who has taken care of me, and I don't know what or how much he has paid. I have been in England about two months, and while in Paris met with the witness Giustini. We are now living together, and we have talked together about the business. I have not conversed with any priest since coming over to give evidence. When I went to put money under the image of the saint I saw Dr. Achilli alone. There were other people coming to pay, but of Dominican monks none except him. The sacristy was a first room; there was a second where the vestments were kept, and there was a third where he sat. The door of the sacristy was in one way, and the entrance to these other rooms in another. I went to the sacristy to put down my name, but the money was paid at the end of the year, and this was done by many. I used to go at different hours, when I knew that Dr. Achilli would be engaged on this particular business. It was in the morning, about 9 or 10, when the act happened, and between November and December, but I do not remember the exact date. I went through the church to get to the sacristy, and there were many people in the church at the time. I went in and presented a little book, which he took and turned over. He then locked the door, and I felt some fear, but he said, "Be quiet, or shame will grow out of it." I kept on saying that I wanted to go out. I said "You are a priest let me go;" and he replied "Oh, this is no sin." (Laughter.) I did not scream, I did not know as much as I know now. I did not, however, faint or lose my consciousness. He kept saying to me "quiet!" but he did not put his hand on my mouth, and if I had been able to call I could have done so; but I had not the strength. I stood a quarter of an hour after the act was committed.

The Attorney-General.—Why?

Witness.—Because he said to me "You are all red in the face now. You had better wait and go out by the monks' entrance, and not through the church." The exit from the sacristy in that way was also locked, but with a sort of latch, and not a large key. Dr. Achilli showed me the way out, opening the door and looking if there was anybody about the entrance. I did not at first tell anybody of what had happened, but when I increased so much in size that I could not conceal the fact I told my mother. Dr. Achilli knew that I was in the family-way, but denied that he had anything to do with it. He gave me sweetmeats both before and after the act happened, and previously inquired if I had brothers and sisters. Dr. Achilli resided in Naples a year or more after I spoke to my mother.

This terminated the cross-examination, and at past 4 o'clock the Court rose, reserving the re-examination till next day.



## SECOND DAY.—TUESDAY, JUNE 22.

The Attorney-General, the Solicitor-General, and Mr. T. F. Ellis appeared for the Crown; and Sir A. E. Cockburn, Mr. Sergeant Wilkins, Mr. Bramwell, Q.C., Mr. Addison, and Mr. Badeley, for the defendant.

When this case was called on this morning, the defendant's witnesses were not forthcoming, in consequence of which the Court was kept waiting for some time.

Lord Campbell called the defendant's attorney, and asked why his witnesses were not here?

The attorney said he had sent two clerks for them to Manchester-buildings.

Lord Campbell said the attorney ought to have got them here by nine o'clock.

In about ten minutes the witnesses arrived.

Sophia Maria Balisano was again put into the box and examined. I paid the money to the images of my own will. There were many others who did so. We were not called by the name of any society. We all received a paper like this from Achilli. I don't know whether they began after Achilli came to the church of St. Pietro. I have not been to that church since. I do not remember his leaving. The last time I saw him was just before my mother heard of this circumstance. I went before the police about Dr. Achilli. I saw the commissary of police. All was reported that had happened. My father and mother went there also. I did not see Achilli there. I received the sweetmeats in the church. I never spoke to him in the streets. I visited him afterwards in the sacristy, and the same thing was repeated.

Cross-examined by the Attorney-General.—I went before the commissary of police before I was confined, when I was four or five months gone with child. Dr. Achilli was yet in Naples. It was Dr. Achilli who first applied to the police. The question was again put, and the witness said, Yes, and he caused my father to be called before the commissary. I never saw Dr. Achilli before the police. I did not accompany my father when he went before the police. I was once before the police. The affair was repeated seven or eight times, but I can't say how often. This was in November and December till Quadragesima, till my mother knew of it. Dr. Achilli did not leave Naples till some time after. Dr. Achilli brought my father before the police to say my family had uttered this calumny against him, which was not true; and this was a calumny.

Re-examined by Sir A. E. Cockburn.—My father was called a second time before the police, after I had made the complaint. The commissary had informed himself between the two complaints whether I was an honest girl, and then sent for my father, and gave the papers to another tribunal. My father was sent for a third time, and some other times, as his knowledge of it increased. [This examination was then dropped, as the witness was not speaking of her own knowledge, and her father was dead.]

Gaetana Principe, examined by Sir A. E. Cockburn.—I am the mother of the last witness. I do not remember the month nor the year when this happened. My daughter was not then married. She was 13 or 14 years of age. I saw her weep and ill, but I did not know what was the matter with her. I inquired of her, and she told me everything, weeping. She told me the name of the father of the child. Up to that time she had always conducted herself well. I saw Dr. Achilli about this matter. It was about Lent. Dr. Achilli was in a procession. I and my husband took him aside and called him into a house, and told him the affair. He was angry. He said it was not he. He said, "Observe carefully, I am a priest." On hearing this matter, he said he had nothing to do with it. [The interpreter was here changed, as he did not appear to understand the witness's *patois*.] He said he was a priest, and he would apply first to Divine justice, and then to the laws of his country. It was I who said this. He then said, "Go to the devil, if you like; to me it matters nothing." He caused me to be called before the commissary of police. I went there. He also caused my husband to be called, and we both of us went. That was a few days after. It

was Dr. Achilli who caused us to be called. Dr. Achilli was not present before the police when we appeared. Dr. Achilli stated to the police that a low, poor family had calumniated him, and the police sent to know. The commissary told us to take our daughter before him. We did so, because he wished to see the age of our daughter. The commissary caused my daughter to confess everything that had happened. Neither I nor my husband was punished by the police. I don't know how soon after Dr. Achilli left Naples. We lost sight of him.

Cross-examined by the Solicitor-General.—I am 59 years of age. I do not know whether I was 24 or 25 years of age when my daughter was born. She was born in Naples. I was born in Naples, and I never left Naples. My husband was a baker. We had no other employment. I can only suppose this happened 13 or 14 years ago, but I cannot mind all this. My husband died three or four years afterwards of a disease of the heart. I did not know Dr. Achilli before this. I knew him by sight. I saw him preaching in all the churches. I could not tell exactly how long after this Dr. Achilli remained at Naples. That could be learned from the police. It might be four or five days after this happened that I saw Dr. Achilli in the procession. The investigation before the police may have lasted three or four months. Dr. Achilli made the complaint about a month after I saw him in the procession. Dr. Achilli did not preach in the churches of Naples a year or more after this. I never saw him after I first spoke to him; then I never saw him any more. My daughter lived with me three or four months after her confinement. I was obliged to send her to work. She went to work. I used to take her there, and to fetch her back. My daughter married eight years ago. My husband died one year after the marriage of my daughter.

Antonio Russo, examined by Sergeant Wilkins.—I am a native of Malta, and a resident at Corfu. I carry on the business of a carpenter. I know one Garamoni, a tailor, at Corfu. I remember walking one night in November, 1844, with Marino Venice. In the street of Via Nello we passed the house of the mother-in-law of Garamoni. As we passed the house Garamoni opened the door. He called me within, and said to me and my friend, "See, here is a Catholic priest, Achilli!" I saw Achilli on the stairs, near the apartment of the wife of Garamoni. This was about 11 or half-past 11 at night; I don't exactly remember. It was dark, without a lamp. I took hold of him, and said, "What are you doing here?" He, trembling, answered, "Me? nothing." I knew it was Achilli, because Garamoni called out, and a lamp was brought. Garamoni was very angry, scolding his wife, and his mother-in-law also, and even Achilli. Garamoni called out for a constable. Achilli then was trembling, but did nothing. When the light was brought, the police not being there, Achilli slipped through and escaped. He went away like a horse. (Laughter.) I and Venice were afterwards called before the Court, about eight or nine days after. Depositions were taken before the tribunal. I and Venice were called and examined before the tribunal. I know Garamoni was in England for some time, for two months and a half or three months. He left, I think, about a month ago.

Cross-examined by the Attorney General.—I came over to this country with Garamoni. I lived with him here. I know Captain Lawrence, the inspector of police at Corfu. I can't tell exactly when Garamoni left this country, because I went away for two or three months, about the time of his (Garamoni's) departure. I went to Dieppe, to Paris, to Marseilles, and then to Corfu. I then came back here. I had not heard of Captain Lawrence's arrival in England before I left England, I learned that in Corfu. I did not tell Garamoni, because everybody in Corfu knew it. When I came back to England, Garamoni was in Corfu. He remained there. I have had the misfortune to be once in prison at Corfu. I was put in prison for two or three hours for some youthful trifle. On account of condemnation I was only put in prison once, because I beat my brother. Some other times I was in prison for youthful trifles. I was once calumniated. That was on a charge of theft. I do not recollect whether I was in prison two, three, or four days for that. I cannot swear I was not in prison four times, because when I was a child I was taken up by the police and

put in prison. I cannot swear I was not in prison in 1840, 1843, 1844, and 1845; I cannot recollect. I was never in the house of Garamoni's mother-in-law before this time. I do not know whether Garamoni lived with his mother-in-law, or with his wife. When Dr. Achilli ran away, he ran on the Esplanade, but I do not know where he ran. I do not know whether Dr. Achilli lived next door to Garamoni's mother-in-law. I never knew Dr. Achilli before that evening. I did not know him in the least. I never saw him after this fact. I was called before the Court of Corfu on this affair. I gave no testimony of it.

Re-examined by Mr. Sergeant Wilkins.—Once only I was calumniated, but it was not true. The trifles I spoke of were for being in the streets and intoxicated. When Garamoni said it was Achilli he called out pretty loud. Achilli did not speak. The wife of Garamoni held up the lamp. Her husband obliged her to hold it up.

Pietro Boccheciampi, examined by Mr. Addison.—I am a native of Cephalonia. I knew Dr. Achilli at Ancona in 1841. Dr. Achilli sought my acquaintance. His object was to go to Corfu. I had a passport for Corfu. Dr. Achilli asked me for permission to insert his name in that passport. I gave the passport to Dr. Achilli. He then went to the English Consul. His name was afterwards inserted in the passport. Dr. Achilli said he could not get out of Italy for want of a passport. He had no money to pay for his passage. I paid for it. I was afterwards repaid.

Mr. Addison.—Had you any difficulty in getting repaid?

The Attorney-General objected to the question. This was not one of the twenty-three charges.

Lord Campbell intimated the question might be put.

Examination continued.—I had a difficulty in getting repaid. I saw Achilli at Corfu. I called at his house there. I saw a young woman there. Achilli said she was his servant—the wife of his servant. He did not mention her name. There are parts of the town at Corfu which are frequented by prostitutes.

Mr. Addison.—Are those parts so confined to prostitutes that those who go there are known to go there to be with them? (Roars of laughter.)

Examination continued.—I have seen Dr. Achilli there more than once.

Cross-examined by the Attorney-General.—It was not 1841, but 1842, when Dr. Achilli accompanied me to Corfu. It was after Dr. Achilli had been confined in the prisons of the Inquisition. He was introduced into the passport as tutor.

Giovanni Patrignani, examined by Mr. Badeley.—I am a jeweller, at Corfu. I know Dr. Achilli; I saw him and knew him at Corfu; he has come several times to my shop. I became acquainted with him in 1843 or 1844. I know Garamoni, the tailor. I received communications from Garamoni, which led me to make observations on Dr. Achilli's conduct. Garamoni told me one evening to observe. I went one evening with Garamoni opposite the street where Garamoni's house was, and where his mother-in-law's house was. We were watching from half-past nine or ten up to eleven o'clock. At that time we saw nothing. Garamoni said, "Let us go and see if my wife is on the balcony." We went to see, and no one was on the balcony. We heard the door of Garamoni's mother-in-law, where Garamoni's wife lived, open. I saw a man come out; by his stature it appeared to me to be Dr. Achilli. I was at the distance of across the court. I knew Dr. Achilli then; he had been to my shop. On leaving the house I no longer saw him, because Achilli's house was close by. I did not see him go to that house; he went that way: this was after eleven. I also knew a person called Coriboni. His wife's name was Albina; she lived in several houses, because she was a woman of bad character. I had no conversation with Dr. Achilli about Coriboni's wife; I never saw her with Dr. Achilli, or at his house. [This witness was not cross-examined.]

William Reynolds, examined by Sir A. E. Cockburn.—I was employed at Zante for twenty-five years, and have now retired on a pension. From 1842 to 1851 I was Collector of Customs and Inspector of Health. I remember Dr. Achilli being brought to my house by Captain Ford and his daughter; this

was in the autumn of 1844. He asked my co-operation and assistance in establishing a church in the island. He took a house for that purpose. It was opposite mine. I used the utmost exertions to get a good congregation, for which purpose subscriptions were afforded. The chapel was opened at the end of 1844 or beginning of 1845. The first time I went to the chapel I was struck by the appearance of a woman of notoriously bad character, who was sitting at the door, and acting as doorkeeper. I knew her by sight from the circumstance of having seen her in Cephalonia, where, for three years, she carried on the same kind of life—that of a prostitute. Her dress was different from that of others, which attracted my attention. She did not dress like the Greek women. I frequently passed her house when I went to see my friends. She was always standing at the door with her breast very much exposed. Her character was notorious. She was a married woman at Cephalonia. Her husband was a chorus-singer. He followed Dr. Achilli into the chapel, and acted as his clerk, reading the Church of England prayers. I called upon Dr. Achilli the first thing next morning, and told him I should be excessively sorry to deprive him of good servants, whom I dare say he had taken on the recommendation of some person, as they were compatriots of his, but it was exceedingly improper to keep such persons. I told him everything I knew about the woman and her husband. To the best of my belief, he told me he was already aware of her previous life; that he hoped she had become a second Magdalen; and that he considered it his duty, as a clergyman, to continue his protection to her. I believe I rejoined he was perfectly at liberty to give what charity he liked, but it was very improper to force her upon the congregation; and that if I saw her or her husband there again I would walk out of the church directly—and I was convinced, if I did so, all the rest of the English would follow my example. I had my daughter and my servant with me at that time. My house was opposite the gable end of Dr. Achilli's. There was a lower house between, but from my bedroom window we could see into a room which was used by this woman as a laundry. The width of the street was about fifteen feet. I have several times seen Dr. Achilli in his shirt sleeves (I could not see the lower part of his dress), and the woman in her open undress, working at her irons. Her shoulders were almost bare. She was ironing. I have seen Dr. Achilli put his hand on her shoulders and her breasts, talking and laughing all the time. I have seen this several times. We used to keep our blinds down. I thought it a very improper sight for my daughters to see. There were one or two houses which commanded a view of this. Mrs. Reid's was one. She is dead. She kept her blinds down. After I had witnessed these familiarities, I saw Dr. Achilli again. I called upon him, and mentioned this subject. He still persisted in her being a Magdalen; and that it was his duty to support her, when all the world was against her. I spoke to him about what I had seen. I charged him with being exceedingly familiar with his servant, but I did not go into all the particulars. I said, I have seen so much going on that I think it necessary to stop it. I advised him to send her away. I saw him a third time on the subject, at my house: he used frequently to come in to tea. I requested my wife to leave us alone, as I wished to communicate what I had seen. I then told him what I had seen. He became excessively violent. I insisted on his sending the man and woman away. I do not remember what he said. He never distinctly denied the connection with the woman. I never charged him with any connection.

Lord Campbell observed that the last observation but one made by the witness was exceedingly improper.

Examination continued.—He did not deny the familiarities. My wife came down stairs, hearing us talk very loud, and the matter dropped. I went to his house previously, I suppose to visit. It was after I remonstrated. I went through his bedroom. There was a bed with two pillows. I said, "So you sleep double, or, there is a double bed." I don't remember how he turned it off. In the dining-room I observed the table was laid with two covers. I aologized for intruding, as I said I thought he was going to have a friend to

dinner. He said I did not intrude; he only had the dinner laid for poor Albina; he made her dine with him. I remember one evening when the band was playing near the Mole. I had some friends with me. Dr. Achilli came behind me with this woman leaning on his arm. There were thousands of people. The band was playing on the water. It was eleven at night. I then paid up my last subscription, and went there no more. All the English subscribers quitted on account of this business—on account of this woman. The matter excited much conversation.

Cross-examined by the Attorney-General.—I arrived here on the 15th of February last. I left the Ionian Islands on the 6th of February. I was then residing at Malta. I resided in the Ionian Islands till February, 1851. I was collector of customs up to that time. The chapel continued open from 1844, or 1845, till July, 1845. Coriboni's wife only acted as doorkeeper once. Coriboni only acted once as clerk. They did not attend the church. It might have been a month before I observed these familiarities. It might have been in April. It was in an upper window. There were glazed windows, and jalousies which opened outside. The jalousies were open. I saw these familiarities five or six times. I can't say how many. They were all of the same kind. I did not stay to see. They continued in the same way after I remonstrated. The windows were still open. Dr. Achilli was quite aware of it. I had told him that I had seen it, and he continued it. He stood behind her. I attended the chapel once or twice after this. I ceased to be a member of the congregation in June or July. These familiarities began in April or May. I can't say when I made the last remonstrances. Dr. Achilli never remonstrated with me for intemperance. I am not an intemperate man by any means. I may have been at a dinner party. He never remonstrated, and I am not intemperate. If I had been I should not have served the Government nearly twenty-five years. Mr. Reid is living in this country, but he is infirm, and nearly blind. Dr. Achilli took me round the house to show me all the rooms. The bedroom was on the third floor, below the laundry. I have talked to Lieutenant Stoney about this matter. I think I told him the reason why I suspected something was wrong was because I saw two pillows on the bed and two covers on the table. I know Captain Constantine Reid. He was in the Ionian Islands with me. I was asked by a letter from Mr. Lewin (the solicitor for the defendant) to go to Corfu and meet a legal gentleman. I told them (the Messrs. Lewin) what I knew. That was in November or December last. I wrote from seeing the circumstance in the papers. I have no relations of the Roman Catholic persuasion. At Corfu I found a Roman Catholic gentleman named Dr. Scandella. I know a person who goes by the name of "Parson Mitchell." I did not see him there. I have not been paid yet. I am to be paid according to the tariff of merchants, and by the English tariff. I am told it is a pound a day. I expect to receive a pound a day from the first day up to this time. The labourer is worthy of his hire. (Laughter.) I subpoenaed some of the witnesses, the Italian ladies. I did not give the witnesses notice that the trial was deferred. I gave notice to Stoney. After I withdrew I did not chance to meet him (Dr. Achilli) again. When Dr. Achilli drank tea with me, this was the third time I remonstrated. He dropped in by accident. Neither my wife nor my daughter saw these familiarities. My servant did. She is here. She sat at the window. There were from seventeen to twenty-five attended the congregation. I never saw Dr. Achilli after I withdrew. This is my handwriting, and this. [Two letters were put into the witness's hand.] I was at the Bridge Hotel, Blackfriars. I was called home, "thanks to Parson Mitchell." He had given in my name with several others as witnesses. [The learned Attorney-General here read two letters written by the witness to Lieutenant Stoney on the subject of this inquiry, and asking him to be a witness. In one of them he said the defendant was disposed to be "very liberal," and he need not be ashamed of appearing, as Lord Shaftesbury and others were to be called.] Stoney said he would not come up unless he was paid, as he was an officer with small private means.

No one ever authorized me to say that the defendant would be liberal. I have not seen the woman since 1845. There is no mistake about the window. There was but one.

Re-examined by Sir A. E. Cockburn.—I was asked to serve the subpoenas because I was going to the house. I had known Lieutenant Stoney several years. When I was at Portsmouth in March he said he could not afford to come up at his own expense. I believe he was then willing to be a witness. I am a Protestant.

Rosina Lavandrie, a nursery governess, residing at Geneva, was servant with Mr. Reynolds in 1844, and continued there till 1851, when the family left the Ionian Islands. She remembered a family named Ford visiting Mr. Reynolds and introducing Dr. Achilli, whom she then saw for the first time. She went to the new chapel when it was opened, and Coriboni's wife was there on her knees before the door. She acted as doorkeeper, and her husband as singer. Witness, when her mistress was ill, sat in a room adjoining, to be within call, and could see thence into a room of Dr. Achilli's house used as a laundry. There were venetian blinds on the window at which witness sat, and witness, therefore, could not be observed, though she could see very well. Witness had seen Coriboni's wife and Dr. Achilli several times in the laundry. Witness saw Coriboni's wife very much uncovered about the neck, and Achilli in his shirt sleeves, and acts of great familiarity between them.

Sir A. E. Cockburn.—Will she describe them?

Witness had seen Dr. Achilli place his hand several times within the bosom of Coriboni's wife, and had seen the two walking arm in arm in the public streets towards the evening. Witness had never seen Coriboni and his wife together. The interior blinds of Mr. Reynolds's windows were closed, because Mrs. Reynolds was ill, and could not bear daylight. As this took place, Dr. Achilli's window became more open.

Cross-examined by the Attorney-General.—Witness had come over from Geneva about a fortnight ago, and had been informed of the matter by letter a few days previously by Mr. Reynolds. Witness now lived with Madame la Plume, whose husband held an office under Government. Her expenses had been paid by Mr. Reynolds. Coriboni lived in the same house with his wife. Witness was very much shocked at what she saw, and always turned away. She only could see what was going on before the window. There was only one window which commanded this view of the laundry in Dr. Achilli's house. The familiarity spoken of continued for three or four months. Witness mentioned them to Mr. and Madame Reynolds and the young lady, who was then fifteen years old. The young lady used to see it herself. Witness was now twenty-nine years old. Witness and the family ceased to speak of it, but other people did.

Re-examined.—Witness was a Protestant. The blind of the window which looked towards Dr. Achilli's house was kept down in order that what took place there might not be seen, as well as to shut out the light from Madame Reynolds.

Vincenzo Barca, for twenty-three years resident at Corfu, and an armourer by profession, remembered Dr. Achilli there in the character of a Catholic priest. Witness was told that he had become a Protestant, but did not know the fact. He had seen Coriboni's wife in public as a bad woman, and he had seen Achilli go into the house where she lived. Coriboni with his wife and Achilli were said to have left Corfu for Zante together, and he missed them on the same day.

Cross-examined by the Attorney-General.—Witness did not know that Achilli lived in the same house as Coriboni and his wife.

Re-examined by Sir A. E. Cockburn.—Coriboni's wife came to Corfu as a figurante, and before Dr. Achilli, who arrived, witness believed, in 1843.

The Rev. George Hadfield, examined by Sergeant Wilkins, said: I am a clergyman of the Church of England, now residing at Whitchurch, Hants, and in August or September, 1846, was appointed Principal of St. Julian's Protestant College, Malta. After the vacation of 1847 I returned to Malta. I am acquainted with Dr. Achilli, who, on the 19th of July, was appointed Italian theological teacher, and on the 11th of December arrived to take up his appoint-

ment. Before his arrival a person named Ciozzi had made accusations against two priests—one named Leonini and the other Saccares—members of the college, and professed Protestants. They were residing in a house appertaining to the college, and were missionary students. In consequence of these accusations I communicated with the committee in London, and at their request inquired into the charges. The committee consisted of the Earl of Shaftesbury, chairman, Earl Waldegrave, and others. At the desire of Crozzi a meeting took place at the Mission-house, which was the residence of Dr. Achilli and the accused priests. Mr. Brian, the Vice-Principal, took the chair, and Dr. Achilli was also present. Ciozzi was called on to state the nature of his accusations against these priests.

Sergeant Wilkins.—What were they?

Witness.—One of the two, Leonini, was charged with having committed adultery in the house with a Maltese lady. A servant of the lady had brought letters frequently to the house. The other was accused of sleeping out of the house, and having frequent connection with prostitutes. Achilli had lived with these men in Malta in the early part of the same year. The priests denied the charge, and the case was for the time held not to be proved. Dr. Achilli then called Ciozzi a calumniator, but the latter persevered. Some time after Ciozzi was called on to substantiate his charges within a month, or withdraw them. Mr. Tucker produced Dr. Bonavia, whose statements were sent by me in writing to Dr. Achilli. Dr. Bonavia said that he had heard from one of the two accused priests, named Saccares, similar revelations to those mentioned by Ciozzi. On giving the statement to Dr. Achilli, on the 10th of February, I told him that I would send it to the committee in London. On the 19th of February I had a letter from Dr. Achilli, announcing that he had need of Mr. Saccares for an important mission; that he started at once, and consequently no longer belonged to the college. Saccares left accordingly. I quitted Malta for England on the 24th of April, 1848, and Dr. Achilli arrived soon after.

Sergeant Wilkins.—Was he dismissed?

Witness.—The resolution rather was that he had resigned. I returned to Malta in July. The chairman of the committee desired me to dismiss Leonini, and Ciozzi continued to teach till after I left Malta, when he returned to the church of Rome. I have had conversations with Dr. Achilli which enable me to say that he was well acquainted with the charges against the two priests.

Cross-examined by the Attorney-General.—Dr. Achilli's pupils were Italian seceding priests. They increased in number from three to seven, including Achilli himself. Ciozzi also was one of them, and taught the Turkish language. Dr. Achilli was the first and the last. He left Malta after me.

The Rev. Alexander Watt, formerly clerical secretary to the Malta College, corroborated the evidence of the preceding witness. He said: Dr. Achilli was anxious that I should suppress all the documents, and deliver them to him, and he stated that it would be of no use to bring them before the committee. The committee, however, invited the Bishop of Gibraltar to investigate; but his Lordship declined, on the ground that Saccares, one of the principal witnesses and an accused, had been sent out of the way by Dr. Achilli. The committee, on that representation, deprived Dr. Achilli of his office, and closed the branch of the college under his charge. On the 26th of September, 1848, Dr. Achilli addressed a letter to Lord Shaftesbury, regretting that his Lordship and other members of the committee allowed him to leave London for his mission, "so embittered as he was; still, he loved them as much as ever in the Lord." He had acted for the general interests of religion, and God forbid that any illwill should exist among them towards each other. "Do not allow," he added, "that I should leave this place without receiving at least a word of Christian friendship. Even to servants, when they are no longer wanted in a house, a certificate of good service is given, and the whole of the month's wages is paid. I have been sent away without a letter of love; and for my stipend, which was to be paid for the whole year, I have only received nine months." In answer to that letter a reply was sent, stating that at the last meeting of the committee,

held on the 15th of November, they had requested me to intimate that, after being absent from his duties a whole month without leave, they were greatly dissatisfied, especially as they did not wish him to come to England on the business of the committee. He had addressed no letter of explanation to them either as to his own absence from his duties, or as to sending Saccares away on a mission of his own. The last fact took place when the most serious accusations were adduced against Saccares, and the ends of justice had been defeated thereby. The accused had been deprived of the opportunity of clearing his character, and the committee had, therefore, additional cause of dissatisfaction with him. The letter further stated that Dr. Achilli's stipend was paid quarterly, and that he had expressed himself perfectly satisfied when he signed the acknowledgment for the payment made. It concluded by saying that the committee had determined to withdraw their confidence from Dr. Achilli, and to remove him from an advantageous situation in which he might have rendered most important services to the cause of Italian reformation. I received no answer to that letter.

Cross-examined by the Attorney-General.—A resolution of the committee was passed on the 19th of June, stating that Dr. Achilli was deprived of his office, and ordering that his salary should be paid up. It was, "that Dr. Achilli having voluntarily abandoned his post at Malta, the engagement with him is virtually terminated by his own act; that this resolution be communicated to him, and that his salary be paid up to the same date."

The Earl of Shaftesbury said: I was chairman of the Committee of the Malta Protestant College, where Dr. Achilli was Italian Professor of Theology. Complaints came before the committee first against Leonini, and then against Saccares, seceded priests, and the committee having ordered an inquiry, a charge was brought against Dr. Achilli for sending Saccares out of the way. Dr. Achilli and others had had the inquiry out at Malta committed to them. The committee received a letter from Mr. Hadfield, and another from the Bishop of Gibraltar, on the subject, and on these letters the committee came to the resolution to break up the whole establishment.

Dr. Bonavia said: I was Latin and Italian teacher at the College in Malta for the last three years, and had a conversation with Dr. Achilli as to the charges of immorality against the two ex-priests. I asked him if he had heard the reports against them, and he said that he had. I then asked him if he believed them, and he replied that he did not. He used no expressions of disapproval. I asked him if he thought it judicious to permit those visits which took place at the mission-house at St. Julian's College. I explained that I referred to the visits of a married lady from Valetta to Leonini. Dr. Achilli asked me, in reply, if I thought it wrong? (Sensation.) I told him it was not judicious, in consequence of the reports circulated in town, because such visits would strengthen them, and more especially as they were paid in Leonini's own room. Then Dr. Achilli asked me who told me that it was so. I replied that I was not authorized to mention names, but that the visits referred to were wrong, and would lead to bad results. Dr. Achilli then got up from his chair in a passion, and said, "You are too scrupulous, because you are married. If you were a bachelor, perhaps you would do worse than Leonini." (Sensation.)

Sir A. Cockburn.—What did he say then?

Witness.—"It would be better for you to mind yourself, and not to meddle with our affairs, if you wish to continue in our friendship." He then left me alone in the room and went to join his companions, who were playing cards. (Sensation.)

Cross-examined by the Attorney-General.—I have mentioned what I now state only once before. I have been in London for five months, and am a member of the Maltese bar, but do not practise. I was advised to come to England on this affair by the Vice-Principal of Malta College.

Harriet Harris, an ordinary-looking servant-maid, living at Kensington, said: In 1850, about two years ago, I was hired by Dr. Achilli, who was living in Northumberland-street, Strand. He had just taken a house in Shaftesbury-



crescent, Pimlico, and he engaged me to take charge of it. I went in the morning about eleven o'clock, and found Mr. Castellini making carpets for the drawing-room. Dr. Achilli arrived shortly after in a cab. He told me to put the house to rights, and to make the best of it, as the things had not all come. I saw about dinner, and Dr. Achilli was in and out of the kitchen all day. There was no blind to the kitchen-window, so I took the table-cover, and with two forks was hanging it up.

Counsel.—What happened then?

Witness.—He took very improper liberties with me. There was no one in the house but ourselves, for Castellini had gone away. He put his hand round my waist, and would have done so in other places, but I prevented him. (Sensation.)

Counsel.—Did he do anything else?

Witness.—He kissed me, and I got away from him into the back kitchen, when he followed me, and told me what he had been through when abroad; that he had suffered six months' imprisonment. He then again made attempts to put his arms round my neck and waist and to kiss me. Afterwards he went out, and came home about twelve o'clock, sleeping next room to me; but nothing took place. He made several attempts to take liberties with me, kissing me, when I was not aware of it, before his wife came home. I told Castellini of it, and also my aunt, Mrs. Cadogan. I was not present when my uncle saw Dr. Achilli. Dr. Achilli did not take any further liberties with me after his wife came back. I never spoke of it to her. The next morning after going there Dr. Achilli asked me how I liked my bed, and if I wished for a bedfellow?

Cross-examined.—Mrs. Achilli found fault with me for being dirty in the kitchen, but I gave her warning. I wished, subsequently, to stay, but she refused to allow me. I left before the month was out. I sent some one to her for a character, and she said two or three things that I thought were not right of me. My aunt first spoke to me on this subject.

Re-examined by Sir A. Cockburn.—When Dr. Achilli asked me if I should like a bedfellow I said, "No, thank you, sir." (Laughter.)

Sir A. Cockburn.—What did he say then?

Witness.—He laughed, and attempted to kiss me.

Mrs. Cadogan said: I am aunt to the last witness, and she complained to me of what Dr. Achilli had done to her about four days after she went into his service. I mentioned the fact to my husband.

Lord Campbell.—Were you not afraid to leave your niece there alone?

Witness.—I did not know he lived there; and I thought he would be less dangerous when his wife arrived. (Laughter.)

Jane Legge, rather a country-looking girl, said: I was in the service of Dr. Achilli about seven or eight months, and left it about ten months ago. I was servant of all work. He lived at No. 3, Shaftesbury-crescent.

Counsel.—Did he take any familiarities with you?

Witness.—Yes, about two months after I went there.

Counsel.—What did he do?

Witness.—I gave notice to leave, and he asked me to stop, which I did. He had kissed me two or three times before then. A day or two after he took liberties with me in my mistress's bedroom. He had connection with me more than once, but I can't say how often.

Counsel.—You became in the familyway?

Witness.—Yes. I stayed four months after that, and then I took another situation. I gave notice three times, but mistress asked me to stay, and then she gave me notice. She gave me a very good character. I could not stop in my place, being ill, and was confined on the 5th of November. The child died, and I for a long time had the smallpox. I saw Dr. Achilli about two weeks before I was confined, but was not more than a minute or two speaking to him. He gave me nothing, and I did not mention the subject to him. While at Dr. Achilli's there was a gentleman named Augustini, who lived there.

Counsel.—Did he also have connection with you?

Witness.—Yes. It was not known to Dr. Achilli. Before the trial came on I had been living with my sister, Mrs. Logan. Dr. Achilli came there, not to see me, but a friend of his who lodged in the house. This was after the baby was dead. I spoke to him at my sister's once or twice.

Counsel.—Did he say anything to you about coming here?

Witness.—I told him that I was subpoenaed, and he said, "I had no occasion to go." I told him a week afterwards again, and he said I was to shut the door in the face of those who came to subpoena me." My sister said, "I must tell the truth if I went." I have not spoken to him since.

The Solicitor-General.—When was it that Mrs. Achilli found fault with you for your conduct with men?

Witness.—She never found fault with me. I had a friend to see me, and one night after a party she came down and found a man with me in the back kitchen.

The Solicitor-General.—Was he not put there to conceal him?

Witness.—No; he did not want to be seen, and he went there. (Laughter.)

The Solicitor-General.—Did Madame Achilli not say then that she would not keep you?

Witness.—No, she did not.

The Solicitor-General.—How many men came to see you while you were in Dr. Achilli's service?

Witness.—I am not obliged to answer that question. (Laughter.) I used to have a young man calling to see me, and there was another. (Much laughter.)

The Solicitor-General.—That is four that you had connection with?

Witness.—I never told you that the two friends who came to see me had anything improper to do with me. (Laughter.)

The Solicitor-General.—Do you know the father of your child?

Witness.—No, sir. Mrs. Achilli found fault about the young man who came to see me, but no other, and she never saw anything wrong with me. I never said anything to my mistress about Dr. Achilli taking improper liberties with me.

Sir A. Cockburn.—You say you can't tell who was the father of your child?

Witness.—I could not swear it.

Sir A. Cockburn.—Why?

Witness.—Because I knew Mr. Augustini.

Sir A. Cockburn.—Had any one else?

Witness (after a pause).—I would not like to swear who was the father of my child. Mr. Augustini had connection with me soon after I went to service, and before Dr. Achilli.

Mrs. Logan, the wife of Robert Logan, an engineer, living at Shaftesbury-crescent, Pimlico, corroborated the evidence of his sister (the last witness), who was delivered at her house. She said: A clerk came from Mr. Sims, the solicitor, to inquire about my sister, and in consequence I sent to Dr. Achilli to tell him. He came on the Sunday evening, and said that Mrs. Castellani was employed by Dr. Newman's party, and that Dr. Newman was a very bad man, and he hoped to have him sent to prison. He also desired me, if they came again, to shut the door in their faces. I spoke to him about my sister, and said it had been a great expense having her to keep, and the baby dying. He said, "Yes, yes," and that was all. He came again on the Tuesday morning, and we were subpoenaed, but he said he thought the subpoenas were of no use, and he did not think they could make us go. He also said that he thought Jane had nothing to say against him. I said, "Of course you know what passed between you and her."

Counsel.—What did he say to that?

Witness.—He made me no answer. The same week he came with a letter that he had had. Some gentleman had written it, signing his initials, and Dr. Achilli seemed angry. He told him that "he ought to be ashamed of himself to draw poor domestics into trouble and not see them out of it."

Counsel.—What more?

Witness.—“Without he sent £5 to defray all expenses, he would hear further of it.” I said I did not know who had sent it.

Counsel.—What did he say?

Witness.—That it must have come from the same parties as the subpoena. I said I knew nothing about it; that I had said nothing to any one about him. Mr. Chercho, a friend of Dr. Achilli's, was staying at my house, and tried to get my sister into the country. (Laughter.)

Cross-examined.—I can't say where my sister came from to me, but, I suppose, from apartments. I was very angry with Madame Castellani bringing myself and my sister into this business.

Sarah Wood, a girl nineteen years old, and living with her parents at Windsor, said: I was in the service of Dr. Achilli, having been recommended to him by Madame Clement, the head of a charitable institution at Windsor. I went into his employment the year before last, and was with him for seven months.

Counsel.—Did Dr. Achilli take any liberties with you?

Witness.—Yes; about a fortnight after I went. I went up stairs to clean his bedroom out. Mrs. Achilli was gone out. Dr. Achilli came in. He followed me several times round the room, and tried to put his hands round my waist, but I walked away.

Counsel.—Did anything interrupt him?

Witness.—Yes; a knock came to the door, and he ran down stairs and commenced writing. It was my mistress, who had returned for her parasol. (Laughter.) My mistress went out again, and I returned to the bedroom to finish it. Then he came again and tried to kiss me. I walked away and began to cry, when I said I would write to Mrs. Tennant.

Counsel.—What did he say?

Witness.—That I would be a very naughty girl to do so. (Laughter.)

Counsel.—He gave you a book?

Witness.—Yes, a religious book. The title of it was *Come to Jesus*. (Sensation.) A fortnight after I was going up stairs, and he called me to his dressing-room, and said I had not dusted the table. Mrs. Achilli was out. I returned for the duster, and knelt down to dust the table, when, meanwhile, he bolted the door.

Counsel.—What did he do?

Witness.—He took me by the shoulders and threw me on a bed.

Counsel.—What did you do?

Witness.—I tried to get away with all my might, but could not.

Counsel.—Did he have connection with you?

Witness.—Yes.

Counsel.—Was it with or against your will?

Witness.—Against, and I said I would leave his service.

Counsel.—But you did not?

Witness.—No. I stayed five months after. (Laughter.)

Counsel.—Can you write?

Witness.—No. I cannot. I left because I was so ill. I asked my mistress several times to write to Mrs. Tennant, but she could not. At last she wrote to Mrs. Weald, who wrote to Mrs. Tennant, and then my father came for me.

Cross-examined.—The House of Mercy at Windsor is for persons who have misconducted themselves, and I was there for nineteen months. I was sixteen when I went there, having fallen out with my sisters and brothers. I am a Protestant. I fasted during Lent while with Mrs. Tennant, but not with Mrs. Achilli.

Counsel.—Have you a prayer-book to the Virgin?

Witness.—No.

Counsel.—Is this House of Mercy a Roman Catholic one?

Witness.—Some people say so, but I think not. Mrs. Tennant was, I believe, a Roman Catholic, but has turned from it. After Mr. Luin's clerk came to see me I only told him of the first liberties Dr. Achilli had taken with

me. Some days after my father and mother questioned me, and told me to tell the truth, and so I told my mother all. I got a woman named Gilbert to write Mr. Luin. Mrs. Gilbert is an elderly person, and has been living at Windsor.

Lord Campbell.—Were you seduced before?

Witness.—Yes, but my father and mother did not know it. I was sent to the House of Mercy because I had fallen out with my brothers and sisters.

Lord Campbell.—How long before going to the House of Mercy had you been seduced?

Witness.—About six months. I had not been out of my father's house more than three days previously. I have been at school, but came away when I was able to hold a baby.

Lord Campbell.—Was it only one person that you kept company with?

Witness.—Yes; only one.

Catherine Foreman, living at Great Smith-street, Westminster, said: I once lived with a Miss Lambert, at No. 3, St. James's-street, Pall-Mall. I lived with her from 1843 to 1849, and remember Dr. Achilli being there in 1847.

Counsel.—Did he attempt to take liberties with you?

Witness.—He did about six months after he came. As I was putting things on the table he threw his arms round me.

Counsel.—Did he say anything?

Witness.—He asked me to confess to him. (Laughter.) He did nothing else on that occasion, for I jumped away from him. On another occasion he had a map on the table, and asked me to point out the way to a certain street in Clerkenwell. As I leant over the table for that purpose, he pressed his body against me. I said nothing, but came away directly.

Counsel.—You are a Catholic. Did you mention those things to your confessor?

Witness.—Yes; and, in consequence of the advice which my confessor gave me, I avoided being alone with Dr. Achilli. I used to make the boy wait on him; but he generally sent down for me. He used to come in late at night.

Cross-examined.—Miss Lambert carried on business as a dressmaker. I did not tell her of Dr. Achilli's conduct. Mr. Simpson, a Roman Catholic gentleman, residing at Clapham-common, first applied to me on the subject of this trial. I then saw Father Hutcheson at the Oratory; but it was Mr. Luin who has induced me to come here. I have not seen Father Hutcheson more than once. I confessed to Father Maguire on the subject of the liberties taken with me.

Mr. James Vincent Harting, a solicitor, said: I went abroad to collect the evidence to be produced in this trial. My first visit was to Rome, then to Viterbo, then again to Rome, then to Naples, then to Malta, then back again to Rome, and then home. I was in communication at Viterbo with the Bishop, his Vicar-General, the Prior of the Quercia Convent, and the Prior and Cyndic of the Gradi Convent. I communicated also with the police authorities there, and the Apostolic Delegate. I obtained no police documents; the "gonfalone," or mayor, assigning as a reason, that they had been destroyed in the last revolution. There were no copies that I received from him; but I received a declaration of what he knew on the subject.

Lord Campbell refused to receive such evidence.

Witness.—I went to Naples, and applied to the Minister of Ecclesiastical Affairs. The documents which he gave me I now produce. One of them is an examined copy of a letter or report from the Minister of Police to the Minister of Ecclesiastical Affairs.

Lord Campbell held that such a document could not be received in evidence.

Witness.—I afterwards went to Rome, and applied to the Assessor of the Court of Inquisition for a copy of the judgment of that court on Dr. Achilli. The Inquisition is a tribunal at Rome, having jurisdiction over ecclesiastics in matters of religion. I received a copy from the notary (who is the proper officer to issue it), with the seal of the Court attached.

The Attorney-General objected to the reception of the document; and the witness was subjected to a long cross-examination, in the course of which the fact came out that the introduction to the notary of the Inquisition was by Monsignor Talbot, the Pope's private secretary.

The Rev. Dr. Grant said: I am an English Roman Catholic bishop.

Lord Campbell.—I won't ask of what see. (Laughter.)

Witness said that he had resided fifteen years at Rome, and was head of the college there for some time. He knew the office of the Inquisition in the Vatican, and stated that the copy of the judgment in question was authentic in his belief. The proceedings of the Court were secret; and strangers were not permitted to inspect the papers. He was familiar with the seal of the Inquisition, but he had not seen it in the particular form attached to the document in question, though he believed it was genuine. He had no personal acquaintance with the proceedings in the office of the Inquisition at the Vatican.

The Attorney-General, referring to the 14th and 15th of Victoria, cap. 99, sec. 7, submitted that no proof whatever had been given of the existence of a court "having jurisdiction over the subject-matter;" and that was essential to make the seal of the court authenticate itself.

Dr. Grant stated that the Inquisition had supreme jurisdiction over ecclesiastics, and that the exact character of its jurisdiction differed in different States. The jurisdiction of the Roman Inquisition was partly criminal, and it was partly a court for advising the Holy See on difficult questions of theology.

Counsel.—What is the nature of the criminal jurisdiction which it exercises?

Witness.—It exercises general jurisdiction in heresy and in grievous cases of immorality against ecclesiastics. What I have said takes in the whole of the charges, but there are other crimes which fall under the classification of heresy.

The Attorney-General objected to the mere production of a judgment without any proof that Dr. Achilli was before the Court, or that there was any proceeding. The document might, therefore, be a mere fabrication from beginning to end.

The Solicitor-General also objected on similar grounds. It was against the constitutional law of every civilized country in Europe to receive a judgment on a criminal charge without evidence that the party had an opportunity of defending himself.

Lord Campbell said: Thank God, in this country the Inquisition does not, and I hope never shall, exist. (Applause.) But, by the law of nations, ample evidence has been given that there is such a tribunal, and, as evidence is now adduced under its seal, there is no difficulty in admitting it *quantum valeat*. Thank God, the jurisdiction of the Inquisition does not extend into this country—(renewed applause); but this country, like other civilized countries, recognises the jurisdiction of other independent States, and therefore I have no difficulty in the world in receiving the document now produced. Though it is the first precedent of the kind, I hope I do so without any the slightest degree of danger to the Protestant religion of this country. (Applause.) I hope it will be understood that I have not received this document as I would a judgment of the Court of Admiralty, but simply as evidence of the allegation in the plea.

The document was then read, and was in effect that, on his own confession, and after a mature examination, it had been found that Dr. Achilli had been guilty of carnal connection with several women in the convent of Viterbo, and of a rape on another woman there; that he had carnally known two women at Capua, and that he had made a young person at Naples a mother. The holy inquisitors deprived him of all ecclesiastical functions for ever, and sentenced him to be sent to a certain convent for three years.

Mr. Reynolds was called to authenticate a plaint in the Civil Courts of Corfu, in which Dr. Achilli now appeared charged with the crime of adultery.

The Rev. W. Nicholls, a Dominican monk, proved that the vows of the order were obedience, poverty, and chastity. Chastity was not taken as a double vow by priests, but they undertook the obligation of perpetual celibacy, which was tantamount thereto.

The counsel for Dr. Achilli having intimated that evidence for the public utility of the libel, if true, would be dispensed with by them,

Sir A. Cockburn announced that the case on behalf of Dr. Newman was closed, and,

It being nearly half-past eight o'clock, the Court adjourned to the following day, at half-past nine o'clock.

The Court-room was crowded almost to suffocation throughout the day.

### THIRD DAY.—WEDNESDAY, JUNE 23.

The trial of this information was resumed to-day, and the court was crowded to such an extent that Lord Campbell had more than once to talk of clearing it. Among the other reforms required in Westminster Hall none are more necessary than better and more commodious court rooms. Those at present in use are so inconvenient that whenever a case attracting great public interest occurs in one of them it becomes converted for the time being into a black hole of Calcutta, while the so-called system of ventilation immensely aggravates the evil.

The defendant's case having been concluded yesterday, the prosecutor's counsel proceeded to call witnesses in contradiction of the evidence produced by the defendant.

Dr. Achilli was the first witness called. He is a plain-featured, middle-sized man, about fifty years of age, and his face is strongly Italian. His forehead is low and receding, his nose prominent, the mouth and the muscles around it full of resolution and courage. He wears a black wig, the hair of which is perfectly straight, and, being close shaved, the wig gives to his appearance a certain air of the conventicle. Yet he retains many traces of the Roman Catholic priest, especially in his bearing, enunciation, and gestures, which have a sort of stealthy grace about them. His eyes are deep set and lustrous, and, with his black hair, dark complexion, and sombre, demure aspect, leave an impression upon the mind of the observer by no means agreeable, and not readily to be forgotten. Judging of his intellectual powers, from his physiognomy, and mode of giving evidence, one would be led to say that he was a man of considerable penetration and cleverness. The questions put to him by his own counsel he answered with great clearness and in a calm, unwavering, quiet manner, without any trace of strong excitement or feelings deeply roused. Sometimes a slight contemptuous smile accompanied his denials of opposing evidence, and once or twice he even seemed to treat points merrily. His general bearing, however, was serious, without any excessive display of anxiety or much apparent mixture of cant. Yet at certain portions of his examination, without losing his self-possession, he became more animated. His dark sunken eyes flashed fire as he listened and replied to the questions put. This was particularly the case when he was cross-examined by Sir Alexander Cockburn on the more material points of the libel, and especially when he was confronted by the Italian women who have sworn that he debauched them. The effect produced by these meetings was quite dramatic, the poor women eyeing their alleged seducer with half-timid yet steady glances, while he, his face overcome for the moment with a slight pallor, turned upon them looks that seemed to pierce through them. Dr. Achilli's manner in the witness-box considerably diminishes the effect of the sanctimonious expression which his singularly-fashioned wig gives to his face. He is evidently a man of strong passion and uncommon nerve, and his evidence will be read with universal interest.

The Attorney-General asked him whether he would give his evidence in English or Italian; to which he replied, "I would prefer to give my evidence in English, but as I cannot speak fluently in conversation I would prefer being assisted by an interpreter."

Sir A. E. Cockburn observed that Dr. Achilli could preach in English.

The Attorney-General said reading a sermon was quite a different thing.

Lord Campbell said no doubt the witness would give his evidence best in Italian.

Dr. Achilli was then examined by the Attorney-General, and gave his evidence as follows:—I am 49 years of age. I was born at Viterbo. I was educated in the Roman Catholic faith, in the College of the Jesuits at Viterbo. I entered into the Dominican convent of La Quercia, at Viterbo, as a novice, in the year 1819. I was then 16 years old. I remained there as a novice little more than one year. I then became a professed monk of the Dominican order. After that, in 1821, I went to Lucca to pursue my studies there. In 1824 I entered into priest's orders. I was then under the canonical age. I obtained my orders, being under age, by a dispensation from the Pope. That was at the solicitation of the Duke of Lucca. In the same year I went to Rome to pursue my studies at the College of Minerva there. In the early part of 1827 I was sent to Capranica to preach the Lent sermons. Capranica is in the diocese of Sultri, in the province of Viterbo. I was appointed by the Bishop of Sultri. I have got the patent of my appointment here. In the spring of 1827 I received the appointment as *Lector Philosophiæ* in the Seminary of the Bishop of Viterbo. The appointment is here. I commenced my duties in November 1827. I remained there discharging my duties till 1833 inclusive. On the 6th of October, 1832, I was appointed by the Master of the Sacred Palace to be his vicar in the diocese of Viterbo. That, among other things, made me not only censor of the press but president of the censorship. I have got here my appointment of vicar from the Master of the Sacred Palace. In 1833 I obtained from Cardinal Velzi, Bishop of Monte Fiasconi, unlimited authority to confess persons of both sexes in his diocese. That gave me authority to impose penance and to give absolution. In the same year, 1833, I was appointed, by the General of the Dominicans, prefect of studies and head professor of the College of Minerva. I have got the appointment here. At the end of 1833 I left Viterbo with the Provincial of my order, on a visitation tour of the Dominican convents in Tuscany. I was engaged on that visitation tour about a year. I returned to Viterbo in November, 1834, when the visitation tour was ended. I then stayed in my own convent at Gradi, with the Provincial. I remained at Viterbo only a few days on my return. I was then appointed visitor in another place. In 1827 I was chosen confessor of the Governor of Viterbo by the apostolical delegate. During the whole time I was at Viterbo, and down to 1833, I continued to act as confessor to the Governor. The general authority to confess which I had at Viterbo was renewable from year to year; and it was renewed from year to year down to 1833. When I returned to Viterbo in 1834 I remained a few days, and was appointed visitor to the convent of Nepi. I was engaged there four weeks. I then went to Rome. I arrived at Rome in the month of December, 1834. On the 21st of April, 1835, I had two patents to preach the Lent sermons. I have got them here. One was from the Cardinal Serra, Archbishop of Capua. The authority was to preach in his cathedral at Capua. The other was from the same Cardinal to preach Lent service in the church of Santa Maria di Capua, a collegiate church. I have them both here. I also received authority to confess persons of both sexes. That was an appointment during pleasure. I held that appointment all the time I was at Naples. In 1835 I obtained letters of secularization from the Pope. I produce them. I did not immediately avail myself of them, because I was requested by Cardinal Acton to remain a little longer in my order, till I had better tried my vocation. After this I went to Naples and lived in the Dominican Convent there for four years. During that time, in the month of June, 1838, I went to Rome. I stayed only a month at Rome, and with that exception I stayed all the time in the Dominican Convent at Naples. In the month of June, 1838, I was confessor to the Princess of Saxony, Louise de Bourbon. In February, 1837, I was made free of my order in the province of Naples. I have a minute of my incorporation. I was affiliated. I produce the minute.

On the 3rd of August, 1837, I had a patent instituting me to be Prior of the convent of St. Pietro at Naples. Before my appointment I was Sub-Prior. That was by the Provincial of the order. There is in it, and also in another document, a clause absolving me from all excommunication; that is a clause which is put in all patents which have the power of conferring any jurisdiction. I was also appointed by the Provincial to be his commissary in a cause to be tried in the Convent del —, near Naples. On the 15th of December, 1838, I was also appointed commissary to conduct an election in a convent at Naples. In 1839 I completed my secularization. I remained at Naples after that as a secular priest for about two years. I then went to Rome. I arrived at Rome from Naples in the year 1841, but I do not recollect the month. In the spring of 1842 I was imprisoned in the Inquisition. I remained in the prison of the Inquisition at that time about three months. I then went to pass the summer in the country near to Rome. I afterwards went to Ancona. From Ancona I proceeded to Corfu. I was assisted in getting from Ancona to Corfu by Boccheiampi. I met him at Ancona, and he said to me he was going to the Ionian Islands. I told him I was going the same way, but I had no passport. He said I might make use of his, because he had a passport for five people, and they were only four. So I took no name, but was No. 5. I remained at Corfu about a year and a half. I went from Corfu to Zante. I remained at Zante about a year and a half; that was till about July, 1846. I then went to Malta. From Malta I came to England. I came to England for the first time in May, 1847. I was then appointed professor at the Malta College. I went to Malta and acted in the duties of my professorship. I returned to England in June, 1848. I remained in England at that time till January, 1849. I then went to Rome. I was married at Rome, on the 24th of June, 1849. I married Miss Heley, an English lady, who had been educated in Italy. Shortly after my marriage I was again put into the Inquisition. I remained in the Inquisition about six months. I was in the Castle of St. Angelo. I was taken out of prison under pretence of giving testimony in a political cause. The French authorities interfered in my favour. After I left Rome I came to England, where I have remained ever since. I have since been minister of the Gospel at the Italian Protestant chapel, in Dufour's-place, till two weeks ago. I have never been deprived of any of my offices. Neither in the month of February, 1831, nor at any other time, did I ever know a person named Elena Valente. While I was at Viterbo I never robbed of her honour any young woman at all. I knew a family at Viterbo of the name of Gentili. There are two families there of the name of Gentili—two brothers. At that time the only woman of the name of Gentili was the wife of Count V. Giulio Gentili. Neither of the families lived in the country. I did not pass my country month in 1831 with the family of Gentili. It was my custom in the month of October to pass my time at the country house of my friends or relations. These families were there—Zelli, Christofori, and Tekeschi. I believe I passed the month with two if not all three. I do not know of any country house of the Gentili. In neither of these three families there was a servant girl with whom I went out to any place. I never went with any servant girl to a place where the two Gentilis were shooting. I do not know that woman. (Elena Valente, now Giustini, was here brought into court, and confronted with the witness.) I never saw her. (The woman appeared to turn pale.) I never had intercourse with that woman in any place in the world. I never had connection with that woman in the house of the Manchorini or anywhere else. I never gave her, or any other woman, a pocket-handkerchief and three sausages. Sausages I never gave to any one, for I never had any. Perhaps a handkerchief I may have given to some old woman; I do not know. (The woman was removed from court.) I do know a person of the name of Rosa di Alessandris, a nun, a relative of mine, of St. Bernardino, in Viterbo. I was never found guilty of having debauched, seduced, and robbed of her honour, Rosa di Alessandris. The one of whom I have spoken is older than I am in age. With her I could not commit any sin, because she is shut in a nunnery. I never was found guilty of having



debauched, seduced, and robbed of her honour a woman of that name. I know of no other woman of that name except my relative. I never had carnal connection with Rosa di Alessandris, in the sacristy of the church at Gradi, or anywhere else. I never gave any money to the father of Rosa di Alessandris as hush money. I think I was a child of five or six when the father of Rosa di Alessandris died. In the month of July, 1834, I did not debauch, seduce, and carnally know a woman whose name is unknown, and who was chaste before. (Laughter.) In 1834 I was on my tour with the Provincial. In 1835 I was not at Monte Fiasconi, nor at Viterbo, nor do I know Vincenza Guerra. I was at Capua in 1835, occupied preaching morning and evening. I resided in the house of the Cardinal Archbishop. I resided all that time under the eyes of the archbishop. I did not in that year, or at any other time, have any connection with any woman who was chaste and unmarried. (The witness Principe, now Balisano, was here brought into court.) In 1840 I was living at Naples as a secular priest. I have never seen that woman. This is the very first time I have seen her. I know this paper very well. The filling up in writing is mine. This was an institution for an image of St. Pietro Martyro to collect money. I did not collect the money, but there was one specially charged to it. Persons came to write their names, but they did not come into the sacristy; they stayed at the door. I never had connection with that woman in the sacristy, or in any rooms off the sacristy, or anywhere. I do not remember walking in a procession when the mother of Principe spoke to me. I was never before the police when any charge was made against me by the parents of Principe. I was never before the police. When I came away from the Dominicans the brethren began to make war upon me, and they spread charges against me. I made no account of this, as is my custom. My friends, irritated at such proceedings, tried in every way to subvert and destroy such charges. The Duke of Lavrino went to the police. Sir A. Cockburn objected to this evidence.

Examination continued.—I and my friends went to the Duke of Lavrino. I was never before the police with the Duke of Lavrino and my friends. Garamoni's mother-in-law lived next door to me at Corfu. I never committed adultery with Garamoni's wife. I remember a fact that happened. One night I was passing before the house of the wife of Garamoni. She was at the door and called me, asking me to answer certain questions. She began to ask these questions, when we were surprised by her husband. The questions were but begun, but not finished. I believe she meant to ask me if I had heard any noise in her house on the previous night; and I believe she alluded to certain screams or cries that in fact I had heard. Before the questions were finished Garamoni came up. He began very furiously to inveigh against his wife. I was at the door of the house. It appears to me that he pushed me inside the house. Certain it is I made a step within the door. I reproved Garamoni for this his bad conduct to his wife. [The court and passages were so greatly thronged that some confusion arose in the court, and the proceedings were in consequence interrupted for a time.] I made way with my hands and got out. This is the only occasion I was ever in the house. I never met her in any place. Some days after I heard that Garamoni spoke against me through the city. I went to complain to the secretary of the Lord High Commissioner, Mr. Fraser. I have heard that Garamoni wrote certain letters, but no more. When I was at Corfu I had two persons in my service, Coriboni and his wife. They remained in my service all the time I remained at Corfu, and all the time I remained at Zante. They did not come with me to Zante, but they came some weeks after I had gone. I knew Mr. Reynolds at Zante very well. I did duty in a chapel at Zante. Mr. Reynolds was one of my congregation. I lived near him. His house did not look into mine, but mine did into his. My house was higher than his, and I could see his house only from my upper windows. There were two upper windows. I think it would have been necessary (for me) to have put the person out of the window to be seen. I never committed any indecency with Coriboni's wife. I recollect that Mr. Reynolds

after an event that happened between us, did speak relative to the persons in my service. I had in friendship and charitably given some slight reproof to Mr. Reynolds because he was in the habit, at that time, of drinking a little too much in the evening, and being drunk. (Laughter.) The first time it appeared to me that he received it (the reproof) with resignation. At the second time he became a little displeased. After this he began to absent himself from the congregation. After a certain time I saw no more of him at my congregation. After the reproof I went to pay him a visit, to make friends with him again, and then he, assuming an altogether serious tone, began to reprove me about my servants. He said that they had been, before coming to me, persons not of good morals. I answered that I should be satisfied if they behaved well while they were in my house. I begged him to tell me if he had anything to say against them at that time. I remember that he himself spoke in eulogy of them, only he would have me, at his will, send them away. Coriboni lived with his wife in the house with me. They had a child. Coriboni's wife never slept with me. She never dined with me. I never told Mr. Reynolds that Coriboni's wife, "poor Albina," was going to dine with me. I never walked arm-in-arm with her in the public streets. The band used to play late at night. I never went with Coriboni's wife, late at night, to hear the band play, nor did I ever go alone. My congregation increased very much after Mr. Reynolds left it. I continued to do duty in the chapel about six or seven months after he left—as long as I continued in Zante. I did duty in the chapel to the last moment I was at Zante. The congregation increased up to the last moment. I do not know that woman at all (Principe's mother). No, no, no; I do not know her at all. When I left Zante, Coriboni and his wife left my service. When I was at the college at Malta there were two priests there, Saccares and Leonini. They had been converted from the Romish church. The accusation against Saccares and Leonini was made while I was in London; and the alleged faults were committed while I was away. The accuser was an Arminian priest, to whom, according to my judgment, no credit ought to be given. I was charged by the committee of the Malta College in London to make inquiries into these charges, although I had advised the secretary of the committee not to institute proceedings against these accused persons. I gave as a reason that I knew very well the character of the accused, and that no credit ought to be given to the accusation. I afterwards investigated the matter on my return to Malta with Mr. Hadfield and Mr. Brien. My result was that there was not any credit to be given to the charge, and I have pleasure in adding that neither Mr. Hadfield nor any other person has ever found that the charges were true. It appeared that our inquiries were finished when it came to my knowledge that they were continued secretly on the part of Mr. Hadfield. I complained of this to him and to the Vice-Principal. The Principal answered that he had been charged by the committee thoroughly to investigate. I sent Saccares somewhere. Before I sent him I communicated to Mr. Hadfield that Saccares was going on a commission into Sicily. I did not send him away to hinder and stifle the investigation. I fancy I was not at all implicated in the charges, as they were in Malta, and I was in London. As far as I know I was not implicated in the charges. I was not dismissed from the College of Malta for several acts of vice and immorality. I never preached against the laws of chastity and morality. I am not an infidel. I believe I never was one. There is no time when I did not believe in the truths of Christianity. There was never a time when I did not believe in the divine mission of our Saviour. I came to this country with my wife. I was lodging when in England, in 1847, at No. 3, St. James's-street, at the house of Miss Lambert. I never took any liberties with the servant of Miss Lambert. The second time I was living at No. 20, Northumberland-street; in Shaftesbury-crescent I had a servant named Harriet, I think. I never conducted myself indecently to Harriet Harris. I never attempted to seduce Harriet Harris. I think I had a servant named Jane Legge. I had two of the name of Jane. One followed Harriet Harris. That Jane lived about six months or so, but I do not recollect exactly.

I never had criminal intercourse with her. I never behaved indecently to her, nor did I ever attempt to seduce her. I remember Sarah, who came from the House of Mercy, at Windsor. I never had criminal intercourse with her, nor attempted it. I was in the prisons of the Inquisition upon two occasions. There was a proceeding in the Courts of the Holy Office against me the first time I was at the Inquisition. I was questioned by the Inquisition every day. I was charged with regard to my teaching in the school, in the pulpit, and the confessional. There was no charge brought against me upon account of my moral conduct. The Inquisition is not competent to try charges of immoral conduct. I was never charged in the Inquisition with immoral conduct. I do not think that I heard that any charge of immoral conduct had been made. I never knew of any charge of immorality being made against me to the Inquisition. I never made any confession to the Inquisition of having had carnal intercourse with any women at Viterbo or elsewhere. [The paper which purported to have come from the office of Inquisition, and which had been put in the day before, was here shown to the witness. The following is a copy of the original in Latin and Italian :]

“ Testor ego infrascriptus notarius S. Congregationis Romanæ, et Universalis Inquisitionis, quod perquisitis actis assumptis in S. Officio contra sacerdotem P. Hiacynthum Achilli religiosum professum ordinis Prædicatorum, constat ex eisdem actis, ipsum Achilli, constitutis judicialibus excussum, fuisse reum confessum de carnali copula, dum in cœnobio Viterbiensi moraretur, cum pluribus fœminis habita, item de defloratione alterius virginis in civitate Montis Falisci, aliasque duas mulieres Capuæ carnaliter cognovisse. Eruitur quoque aliam puellam Neapoli matrem reddidisse; ac superiorem ordinis Prædicatorum scutato quinquaginta alteri fœminæ ab eodem Achilli corruptæ pependisse ad damna illata sarcienda.

“ Denique fidem facio, quod ob memorata crimina, et alia de quibus in actis maturo prius discusso examine gravaminum ex actis resultantium, perpensis defensionibus, aliisque ex more consideratis, nec non benigne excepta ipsius inquisiti confessione, ejusdemque declaratione sequentis tenoris.—Non chiedo di non esser gastigato, anzi amo—che si proceda severamente sul conto mio in quel modo la giustizia esige. Ricevero, con rassegnazione qualunque disposizione venga emanata, ed ove mancasse qualche ragione a procedere con più rigore, la mia confessione sia bastante a punirmi come meglio credera il S. Tribunale.—Emi Inquisitores Generales, Fer. iv., die 16 Junii, 1841, in Conventu S. Mariæ supra Minervam decreverunt: Inquisitus P. Hiacynthus Achilli—prævia suspensione perpetua a celebrando sacrificio Missæ, inhabilitatione perpetua ad quemcumque directionem animarum, et ad Verbi Dei prædicationem, nec non privationis vocis activæ, ac passivæ, et impositis pœnitentiis salutaribus, damniatur ad manendum per triennium in aliqua domo Religiosa sui ordinis strictioris observantiæ.

“ In quorum fidem Datum ex Cancellaria S. Officii hac die 22 Septembris, 1851.

“ ANGELUS ARGENTI,

“ S. Rom. et Univ. Inquis., Notus.

“ Testis, fr. VINCENTIUS LEO SALLUA. O.,

“ Præd. 1. Socius S. R. Inquis.

“ Witness, JOHN GORDON,

“ Cong. Orat. Presb., Birmingham.

“ Witness, NICHOLAS DARNELL,

“ Cong. Orat. Presb., Birmingham.

“ Sworn before me at Rome, this 17th day of November, 1851,

“ JOHN FREEBORN,

“ British Consular Agent, Rome.”

[The above document is sealed at the signature with a large seal bearing the insignia of the triple crown, supported by St. Peter and St. Paul, &c., with these words on the margin, “Sigil. S. Roman. et Univers. Inquisitionis,” in Roman capitals, and at the foot it is stamped with the seal of the British Consulate, Rome.]

I have read this paper over. I know of no proceeding in which those charges were brought to my notice. I made no confession. I did not throw myself upon their compassion. Perhaps they might have asked me, at the commenee-

ment, whether I was content to stand, or throw myself upon their mercy. Upon that supposition I should have answered "Yes;" and then the Chancellor of the Inquisition would naturally have written that I threw myself upon their mercy. I believe that the first words may be admitted, but not the last. I did not ask not to be chastised, if I merited it. On the contrary, I should desire that severer proceedings should be instituted in such manner as justice required. I said I should receive with resignation whatever orders or dispositions may emanate. I cannot admit the rest. If they wanted to proceed with greater rigour, I said my confession would be sufficient. It is probable I may have put in the first part, but not the second. When I made that statement I had not had any charge made against me about deflowering women, &c. It was only as to my teaching. No judgment, no sentence, was pronounced upon me; only a decree of the Congregation of the Holy Office, ordered by the Pope, that I should be set at liberty. I was set at liberty under certain conditions: that I should become reconciled again to the Holy See, and, in the meantime, that I should abstain from the exercise of my ministry. This reconciliation, according to the secret instructions given, consisted in that I should write and publish some book in favour of the Roman Catholic church. I must correct an observation I made, not having sufficiently reflected. My incarceration at the Inquisition took place in 1841, and after my liberation I remained a certain time at Rome, and afterwards, as I said, I went into the country, in the neighbourhood of Rome. These are all the conditions upon which I was released from the Inquisition.

Cross-examined by Sir A. E. Cockburn.—I became a monk in 1820, and took the vows. The Dominicans profess one single vow. The promise I made was in these words:—"I, Giacinto Achilli, promise obedience to God, to the blessed Virgin, to the Patriarch St. Domenico, and to you, most Reverend Father-General of the order, till death." I promised nothing else. I believe a Dominican monk does not take a vow of poverty and chastity. I swear I took no vow of poverty and chastity. If it is not their intention to profess these vows they do not take them. It depends on their will. The vow of obedience is the only necessary condition. I began a priest in 1824. Chastity is part of the obligation of a priest. I remained at Viterbo, with occasional absence, till 1833. During that time I have not had any intercourse with any women, according to the accusation. I had not intercourse with many others.

Sir A. E. Cockburn.—Have you had connection with other women?

Dr. Achilli.—I could answer "No;" but I have the privilege of the judge not to answer.

Lord Campbell said the witness was not bound to answer the question.

Sir A. Cockburn.—Do you decline to answer on account of your privilege?

Dr. Achilli.—I decline to answer on account of my privilege. I never had any intercourse with any woman in the sacristy at Gradi, nor in any house contiguous to the sacristy, nor in any other room belonging to the church. In 1826 I was not sent to La Quercia; I went of my own accord; I did not go as penance. The power given to me to confess was very rarely given. The provincials are changed every two years. Brochetti took me on his visitation tour in 1833. He was a great friend of mine. It is possible that something, some gossip, may have taken place about some charges. Spaletti, vicar to the bishop, made them. I published that book, *Dealings with the Inquisition*. [Sir A. E. Cockburn here read a passage from the book, p. 130.] Spaletti did so, I was told. I did not go on this visitation to get out of the way of these charges. I was at a distance from Viterbo, and did not know what was going on. I started from Rome. There was not a single word of gossip against me when I left Viterbo. There was not, in 1834, a charge made against me of having attempted the virtue of a woman, in Cardinal Velzi's house. I may have heard that charge. I cannot recollect whether it was made before or after I went to Nepi. I did not go to Nepi to get out of the way. I do not recollect that charge. I am not indifferent about these imputations: thousands and thousands such have been made; for instance, when I was in the Castle of St. Angelo, it was said I

had killed a nun, and this was brought before the Government of the French Republic. It is a condition of being secularized that you should have a patrimony.

Sir A. E. Cockburn read from the document of secularization a passage in which the word "*notorum*" was used in reference to Dr. Achilli.

Dr. Achilli.—You may ascertain from two Dominican monks, who will be called as my witnesses, what is the real nature of the vows taken. I obtained a little after a rescript to have a decree of secularization. I obtained my patrimony from my uncle, a few months after. I obtained the rescript in 1839. The Government must concur in the decree of secularization from the Pope. According to the laws of Naples, I was no longer a monk. In order to be secularized, you must obtain the patronage of an ordinary. I was received immediately, but the public act was not received in the Chancery, and therefore I have not got it. It should be written on the brief, but that is not necessary. I never saw Elena Valente before to-day. All three of the parties whom I named had houses in the neighbourhood of Viterbo. Christofori had a house in the neighbourhood: in his house there were a priest, Christofori, a lady, a sister-in-law of the clergyman, and a son of the lady, my pupil. That lady was a Gentili, the widow of Christofori. That October, 1831, I passed in the house of the three parties. I passed part of the time in the house of the widow Christofori, who had been a Gentili. I never saw that woman there; I don't recollect a lame servant there. All the month of October I used to go out shooting. I may have seen ten shooting parties. They are all chases there. Sport is carried on with nets. I used to go out shooting with my gun. The vicar of the Bishop Spaletti used to go out shooting with me.

Lord Campbell said that in Roman Catholic times the bishops in this country used to keep packs of hounds.

Sir A. E. Cockburn.—They were not monks, my lord.

Dr. Achilli.—I thought Spaletti was my friend. I never took any women with me. I used to go with the son of Christofori. I never took a woman, saying I would show her the shooting. I never saw her before to-day. I do not precisely know if I had friends at Viterbo. I am not allowed to correspond with them. I have several relations at Viterbo. I cannot correspond with them: they do not refuse to correspond with me; on the contrary, I know they love me. Since I have been in London I have not attempted to correspond with them. I have thought it better not to compromise them.

Sir A. E. Cockburn asked the witness how he got funds for this prosecution?

Dr. Achilli.—I hope the providence of God will provide me with funds through some friends. They do not exist as yet. I expect to get funds through some friends who I hope will have the kindness to engage for this need of mine.

Lord Campbell.—Are we to inquire into this matter?

Sir A. E. Cockburn.—It is only to show that funds are not wanting.

Lord Campbell.—As far as I can see, funds are not wanting on either side. (Laughter.)

Dr. Achilli.—I have not caused inquiry to be made about Valente, or any other woman, but I have only caused that which was done at Viterbo by my adversaries to be observed. If I were to name the persons who have offered that assistance it would compromise them with the Papal Government. Rosa di Alessandris, my relative, became a nun long before I became a monk. I never knew any other person of that name. The name Capretta is a name given at Viterbo to all women who have light hair. The Rosa di Alessandris, the nun, had not light hair. I never knew Rosa di Alessandris, a young woman, with light hair. I never gave or caused money to be given for this purpose; nor to be given by my consent or on my account. They have given it on their own account. I have not said of the monks at Viterbo that they were profligates. Among them there are some good and bad. I believe some of them were loose in their lives in regard to women. According to the law, it

was the duty to proceed, and I have been charged by my superiors to proceed, against such. I have got the commission here. As long as I remained among the Dominicans I was their idol. I left there in 1833. In 1835 I was at Capua. I went to Naples, having spent a Lent at Capua. I spent forty days under the eyes and nose of the cardinal; but I appeal to the privilege granted me by the judge. (This was said in answer to a question as to whether he had not had connection with women at Naples.) I did not make attempt on the virtue of the daughter of the chamberlain of the Bishop of Capua. It is quite new. I have said before that I could have answered "No;" but I have the privilege to decline answering, and I avail myself of it. I believe that want of chastity is a real crime for all Christians, but I do not make much difference for clergymen and laymen. I never saw this woman before this day (Principe). I see an Italian face more Neapolitan than otherwise. Her dress confirms me in that opinion. My word is an oath as a Christian. Continually swearing is no use. I respect an oath to compare it with a simple word, but I make a word of the same value as an oath. I swear I never had carnal knowledge of that young woman. I never saw the mother before. (She stood forward.) That woman and her husband certainly never called me out of a procession and charged me with debauching their daughter. No one ever did that; and allow me to state a reason. It is impossible to ask a friar when going in a procession any question at all. No complaint was made to the police against me, nor by me, nor by my friends at my instigation, but because of their affection towards me. They used to tell me after they made the application. They told me that many times. It was a little time only before the police. I did not know the name of the family they brought before the police. It is very possible that they (my friends) have told me the names, but I have dismissed them from my mind. I did not go before police myself, because I knew these things had no reality. I did not receive the money, because I was the Prior, and I had the power to fill up even that employment. The entries in the book were sometimes, not always, entered by me. I did not set this society on foot to obtain the money. I may have written the paper myself, but I believe not. When I got the authorization for secularization from the Government in 1839 there were charges made by Ancorani and Lambruschini. They were the cause of my being taken taken to the Inquisition. Ancorani was the Principal of my order. (Sir A. E. Cockburn here read a passage from page 264 of Dr. Achilli's work, to show the terms in which the witness spoke of these two parties.) I speak there for the purpose of making revelations to true Christians. Sometimes it is necessary to name the persons. When I obtained secularization Ancorani was not my superior. Oliveiri was the superior then. Ancorani was the superior when I completed my secularization. When I exhibited the decree of authorization of secularization, which till then was not known, bitter war was begun against me. There was no accusation pending when I completed my secularization. There were no proceedings pending. I did not quit the order to avoid proceedings being instituted against me. I had already addressed my petition to the Government of Naples for my *executur* before I heard of proceedings being made against me. It was after I presented my petition that I heard of gossip of the monks at Rome. I have never been suspended from any office I ever held. I terminated my priorate in peace with all the monks. They were about to elect me again to the office when I sent my petition. That was in July, 1839, when my priorate expired. After I sent my petition I received a curious letter from Ancorani. Among other things in this letter he ordered me to set off and go somewhere—possibly to Scureola. I was no longer under his jurisdiction. I had these orders—to go to Benevento, to Penni, in the Abruzzi, and thirdly to Scureola. Scureola is not a convent of severe penitence. Those convents are all small, and where they are small there is no strict observance. He did not send me for three years. Such an order is never given for a determined time, but during pleasure. I said the letter contained many curious things. He had somewhat lost his wits. He had been for forty-seven years inquisitor, and this is the reason I treated him in that

way in my book. The letter did not say I was sent to Scurcola for immoralities. There was a question in the letter about a convent which wanted reformation. He wanted to change good habits to bad, because he had lost his wits. To same questions I give same answers.

Sir A. E. Cockburn.—When you were at Naples had you intercourse with several women ?

Dr. Achilli.—To the same question I give the same answer.

Sir A. E. Cockburn.—How came you to leave Naples and go to Rome in 1841 ?

Dr. Achilli.—Domestic family matters took me there. I went to go on to Viterbo.

Sir A. E. Cockburn.—You were arrested.

Dr. Achilli.—Afterwards, but not then.

Sir A. E. Cockburn.—Where were you arrested ?

Dr. Achilli.—At Rome. No proceedings were instituted against me at Naples. I was not removed from the Neapolitan territory. My passport was granted me, and I left Naples freely.

Sir A. Cockburn.—In September, 1840, were you not conducted out of Naples by the police ?

Dr. Achilli.—No. I left with an uncle.

Sir A. Cockburn.—Did they not direct you to leave and give you a passport to Rome, and did you not return after a short absence secretly to Naples ?

Dr. Achilli.—No. I applied for my passport openly, and returned openly. I came back because I was lame and was obliged to keep my bed.

Sir A. Cockburn.—Did the police not again remove you after your return ?

Dr. Achilli.—No ; they gave no such orders. I remained a few weeks, after which I left and went to the neighbourhood. I was arrested in Rome. Having left the Dominican order I had renounced all the employments I held in it.

Sir A. Cockburn.—You say no charge was made against you by the Inquisition on the score of immorality ; you say it is not in the jurisdiction of that court. Did you admit that you had preached heretical doctrines ?

Dr. Achilli.—There was no occasion to do so, because the Court would not urge it.

Sir A. Cockburn.—Did you make any admission as to anything with which you were charged ?

Dr. Achilli.—Yes. I was accused of preaching the doctrine of justification by faith only.

Sir A. Cockburn.—Did you in respect of that throw yourself on the mercy of the Court ?

Dr. Achilli.—I confessed, and justified myself by Thomas Aquinas. It is a general rule that whoever is accused before the Inquisition is suspended until he is absolved—absolutely. I was not so absolved. I was to remain under surveillance.

Sir A. Cockburn.—How long ?

Dr. Achilli.—There was no time specified, but it would be until my final reconciliation with the Holy See. During the time this surveillance lasted I would be prevented exercising the offices of the priesthood, and excluded from any benefice or preferment.

Sir A. Cockburn.—As well as being under surveillance, were you not to remain for three years in some house of severe observance ?

Dr. Achilli.—I do not know any such condition. No sentence was ever pronounced against me. All that was done was the decree that I should go out of the Inquisition. The order of surveillance was a part of that decree. I was also recommended, or warmly advised, to spend some time in a place of religious retreat.

Sir A. Cockburn.—Were you not ordered to spend these three years at Nazali, and had you not the police with you ?

Dr. Achilli.—I went of my own accord, and there were police with me. (Laughter.) There is a religious house there, but not of strict observance. I went because I was acquainted with some of the monks, who themselves had

invited me. I went about in the neighbourhood. I went to Nazali to collect myself. (Laughter.)

Sir A. Cockburn.—You succeeded in collecting yourself in a fortnight, and then you took yourself off? (Laughter.)

Dr. Achilli.—I was wearied with my confinement in the Inquisition, and went to Ancona to leave the Papal States. Before I started secretly I had written for a passport to a friend of mine at Rome, who said that the Government would not give me a passport, and I was recommended to go back soon to Rome.

Sir A. Cockburn.—You went from Ancona to Corfu?

Dr. Achilli.—Yes, I lived there some months before I took up my residence next to the house of Garamoni's wife. It was about the middle of the time of my staying there that the interview I have stated happened. I might have known Garamoni before, but I doubt it, for I had no regard for him. (Laughter.) I employed him as a tailor. I knew he was not living with his wife. Everybody in Corfu knew it.

Sir A. Cockburn.—What hour was it when this surprise by the husband took place?

Dr. Achilli.—I do not know exactly, but it was not my habit to go home much before eleven o'clock at night. It might have been later; I cannot speak to a quarter of an hour.

Sir A. Cockburn.—Were you in the dress of a priest?

Dr. Achilli.—No, I wore a cloak, and the woman had no time to say what she wanted. The husband did not seize me. He might have pushed against me. He had no quarrel with me.

Sir A. Cockburn.—But he charged his wife with improper intercourse with you?

Dr. Achilli.—That was his usual habit.

Sir A. Cockburn.—What was his usual habit?

Dr. Achilli.—To be a man of great incivility. (Laughter.) I don't recollect his words, but I think they were "Worthless woman, I have caught you."

Sir A. Cockburn.—Did he not grasp you, while he made his wife hold up the candle to see who you were?

Dr. Achilli (with a smile).—Oh, no; he did not put his hands on me.

Sir A. Cockburn.—Did you not use force?

Dr. Achilli.—There was the husband and wife and another person. I had to open a passage, but I did not run, for my own house was close at hand, and the backdoor was very near that of Garamoni's. (Laughter.)

Sir A. Cockburn.—Have you got Madame Garamoni here?

Dr. Achilli (with a laugh).—Yes.

Sir A. Cockburn.—Have you Madame Coriboni?

Dr. Achilli.—No. At Corfu I had put off my priestly character, and was travelling as a cavalier, but I did not put it in my passport; only on my card.

Sir A. Cockburn.—Where did you make the acquaintance of Madame Coriboni?

Dr. Achilli.—At Corfu, in the summer of 1843. Her husband was a small tradesman. Then he went about with an operatic company, and then he was at the theatre.

Sir A. Cockburn.—And the wife; what was she?

Dr. Achilli.—She was his wife, and lived with him. When I took the husband as my servant she came to the house to see him.

Sir A. Cockburn.—How did you make their acquaintance?

Dr. Achilli.—All the Italians at Corfu sought my acquaintance, and they among the number. She was not singularly dressed, or lightly covered, but, on the contrary, dressed very modestly. I took no trouble to ascertain Coriboni's character. I knew him habitually by sight, and took him to be a good man. (Laughter.)

Sir A. Cockburn.—Did the lady from her appearance seem a good woman? (Laughter.)



Dr. Achilli.—I had nothing to say of her.

Sir A. Cockburn.—Was she good-looking.

Dr. Achilli.—Neither the one thing nor the other. (Laughter.)

Sir A. Cockburn.—Did you engage them to come to your service before you left Corfu for Zante?

Dr. Achilli.—No. I dismissed them when I left Corfu, and I afterwards sent for them. A part of the house was used for my congregation.

Sir A. Cockburn.—Was Coriboni a Protestant?

Dr. Achilli.—The greatest part of the Italians are neither Catholics nor Protestants. (Laughter.) Coriboni had an antipathy to the Romish church, but he was not a Protestant. (Laughter.)

Sir A. Cockburn.—He was in a transition state, not good enough for a parson, but good enough for a clerk. (Much laughter.) The lady, did she officiate?

Dr. Achilli.—No; but Coriboni continued to act as clerk.

Sir A. Cockburn.—Did Mr. Reynolds not, when you first opened the chapel, expostulate with you on seeing these persons employed?

Dr. Achilli.—No; on the contrary, he often used my servant. On two occasions I reprov'd Mr. Reynolds for intemperance, and did so at the request of his own wife. As far as I could judge he was a habitual drunkard. I have seen him so sometimes.

Sir A. Cockburn.—How long had you known him before you reprov'd him?

Dr. Achilli.—Some months; and the second time he got angry. Coriboni has gone back to the Roman States.

Sir A. Cockburn.—Have they become Roman Catholics?

Dr. Achilli.—No; nor Protestants, but negatives. (Much laughter.) I never said that Madame Coriboni was a Magdalen. I would immediately have lost my position if I had been seen once arm in arm with Madame Coriboni. I may have met her in the street coming home, and have come home with her, but only near the house. I left Zante because I had determined to open an Italian church in Malta. A fortnight after my arrival I opened a domestic chapel, and when I left that house I opened an Italian chapel.

Sir A. Cockburn.—What means of subsistence had you at this time?

Dr. Achilli.—I received secretly from my family the means of subsistence, and I also earned some money by my literary labours.

Sir A. Cockburn.—What number of bibles did you charge Saccares to take to Sicily?

Dr. Achilli.—About 50 or 60, from the depôt of the Biblical Society in Malta.

Sir A. Cockburn.—Did you know that a day was fixed by Mr. Hadfield for hearing the case against Saccares?

Dr. Achilli.—No.

Sir A. Cockburn.—Did he not tell you he was going to resume the investigation?

Dr. Achilli.—No. (Sensation.) I engaged the woman Harriet Harris while living in Northumberland-street, Strand. Madame Achilli was then absent, but came to town two or three days after. A person named Castellan was employed in the house at the time, and she remained there till late in the evening. I never took any liberties with either her or Jane Legge. I know her sister, Mrs. Logan. She did not send for me, but I had occasion to go to her house, where two of my friends were living. She told me that she was forced to accept the subpœna by a man who put into her hand a guinea.

Sir A. Cockburn.—Did you tell her if any man came there about it again to shut the door in his face?

Dr. Achilli.—She told me that the subpœna was put into her hand with violence, and I said that in the houses of England I did not believe violence could be offered.

Sir A. Cockburn.—Did anything pass about your being intimate with her sister?

Dr. Achilli.—No; never. She never said anything of the kind to me. On

the contrary, she was sorry that the matter about her sister had been mooted at all.

Sir A. Cockburn.—Now, about Sarah Wood. Did you take any liberties with her?

Dr. Achilli.—No; never. I do not know her uncle.

Sir A. Cockburn.—Have you ever had any connexion with other women in England but these?

A jurymen thought it an unfair question to put.

Lord Campbell.—The learned counsel has a right to put it.

Sir A. Cockburn.—I will put a specific case. Did you know a girl named Louisa Colchester?

Lord Campbell refused to allow this question.

Sir A. Cockburn.—When did you openly renounce Popery?

Dr. Achilli.—As soon as I reached Corfu I began to write letters to some cardinals and the Pope. I began to doubt the real presence at the mass when I was in Viterbo, as Professor of Philosophy, in 1832.

Sir A. Cockburn here read several passages from the writings of the witness on the errors of the mass, and then asked whether he did not, after believing it to be an imposition, practice the mass.

Dr. Achilli.—That would have held good as an objection to all the reformers. I had the persuasion of the imposition in my mind, but not in my heart. (Laughter.) I believe that conversion in man rests more in the heart than in the mind. (Sensation.)

Sir A. Cockburn.—Was it not made an objection to you that you did not attend the choir regularly?

Dr. Achilli.—No, never. I was, as Professor of Philosophy, not obliged to do so.

The re-examination by Sir F. Theziger was a very brief one, and Dr. Achilli retired, having been in the witness-box from half-past nine to half-past four o'clock.

Dr. Domenico Poggi said—I was brought up in the church of Rome, and was a Dominican father. I am now principal of a Protestant educational establishment at Seacombe, near Liverpool. I was in Viterbo from the beginning of 1831 to June, 1833. I lived in the convent of Gradi when Dr. Achilli was sub-prior. I remember his preaching a sermon at Monte-fiasconi, at the request of the Princess of Saxony, whose confessor he was. Dr. Achilli was then universally and very highly esteemed. At Rome I never heard anything against him, but at Viterbo I did, for there he had many enemies. The monks and priests greatly esteemed him, but not the bishop. His appointment to preach the Lent sermons, to visit convents, and to be prior of the convent of St. Pretro the Martyr, at Naples, are great marks of distinction, and could only have been conferred on a man whose character for morality stood high. I took the vow of obedience as a Dominican, but always thought that though not explicitly, implicitly those of "poverty" and "chastity" were included. The book of *Ferrares* is one of authority, but there are things in it which have been obsolete.

Sir A. Cockburn.—It would be an essential thing in your opinion for a Dominican to obey the vows of poverty and chastity?

Witness.—Yes, except that I don't think he would be a Dominican long. (Laughter.)

Sir A. Cockburn.—When did you leave the church?

Witness.—It is enough to say that I am a Protestant. I am happy to say that I am so now; but I do not come here to give an account of my life and actions. (Laughter.)

Sir A. Cockburn.—What can be the mystery? When did you first go to a Protestant church?

Witness.—I beg your pardon, Sir, but I must decline. I have not come here to answer on extraneous subjects. (Much laughter.) I left Italy in 1840.

Sir A. Cockburn.—At that time you had seceded?

Witness.—I had in my mind but I won't answer any more. (Laughter.)

Dominichi Paoli, formerly a friar of the order of Serviti at Viterbo, said : I lived in that town from the end of 1831 to near the end of 1837. I knew Dr. Achilli there. I have nothing to say against him, and I saw that he was then in public estimation. I know nothing of any alleged immoralities on the part of Dr. Achilli.

Cross-examined.—I am here a year, a free man, having left the Roman Catholic church. I came originally, engaged by a society to evangelize foreigners during the Great Exhibition. (Much laughter.)

Sir A. Cockburn.—What society?

Witness.—It was a society that had an office in Leicester-square. I was at Geneva, and was called to England by that society. I have been severed from the communion of the Catholic church for two years, but I left Italy freely, in order to profess freely my religious opinions. I have known Dr. Achilli and treated him as an acquaintance. Between leaving Italy and going to Geneva I went here and there, wherever I was sent by my superior.

Sir A. Cockburn.—Who supports you now?

Witness.—I live on the means afforded by Father Gavazzi. I act as his secretary.

Sir A. Cockburn.—Is Father Gavazzi the man who, being formerly in the church of Rome, now goes about speaking against it?

Witness.—Yes.

Captain William Hudson Lawrence, R.A., on half-pay, Inspector-General of Police in the Ionian Islands, said : In consequence of an application from the solicitor for the prosecution in this case, I sent for a copy of the proceedings between Garamoni and his wife at Corfu. I was employed to find the wife of Garamoni, and she is now in this country. I also tried to find out Coriboni and his wife, but could get no information about them.

The Attorney-General.—What is the character of the witness Russo who has been brought over here?

Witness.—I only know it from documents at the police-office.

Mr. Kirkpatrick, for many years Chief Justice of the Ionian Islands, authenticated the proceedings in the civil and ecclesiastical courts of Corfu for alimony by Garamoni's wife. The papers gave no evidence of witnesses being examined. The case only proceeded a short way, for a reconciliation took place.

Sir A. Cockburn reminded the witness that the Italian word for reconciliation also meant compromise.

Mariania Crisaffi Garamoni, a very smartly-dressed person, but exceedingly plain-looking, said : I am the wife of Garamoni, a tailor, who carried on business at Corfu. I remember Dr. Achilli living next door to me and my mother there. My husband did not reside with us. I remember one night speaking to Dr. Achilli as he was passing. My husband used violence towards me many times, and many accusations have been made against him on that account. I wish I had him here. (Laughter.) My face has been disfigured by him. I wished to call Dr. Achilli because my mother pointed him out to me, and said that probably he, being a neighbour, had overheard the quarrel between me and a lady friend of my husband. I said to her that I would wait till the evening and ask him if he had heard it. I did so. I got to the window for the purpose of calling him, and as I was going down to speak to him my husband and Dr. Achilli rushed in together. I wished to call him that he might be a witness in my favour, but I did not know him. I should like my husband to be here; but he is not—he has run away. (Laughter.) He rushed up stairs on the occasion referred to, and said many things he ought not to say, because a cause was given in my favour. Dr. Achilli was outside of the door when my husband pushed him up to it. I know nothing of these calumnies. I know not who this Dr. Achilli is, and would not recognise him except that the daughter of the landlady where I now reside pointed him out to me.

Sir A. Cockburn.—There were proceedings in the court between you and your husband?

Witness.—Yes, and I came out victorious. (Laughter.) He wished that we

should make peace; I had forgiven him before a hundred times, and so I forgave him this also. We lived together some years, but now we are separated again, and have been for more than seven years.

Cross-examined by Sir A. Cockburn.—I have been married about sixteen years, and my husband has always led me a miserable life.

Sir A. Cockburn.—Did the quarrels not arise from his accusing you of being intimate with other men?

Witness.—No; it was I accused him. I always gave proofs of my innocence. (Laughter.)

Sir A. Cockburn.—Why did you bring forward such proofs unless you were accused?

Witness.—I was always beaten because he had to do with other women. (Laughter.)

Sir A. Cockburn.—Was it not because he said you had to do with other men?

Witness.—No; there are many proofs of what I say—two doctors, four lawyers, and many other men. (Much laughter.) They will all prove that he is a bad man. (Continued laughter.)

Sir A. Cockburn.—How did you know that Dr. Achilli was out that you waited for him?

Witness.—My mother told me that he was not at home, and I said I will remain all night, if necessary, in order to see him.

Sir A. Cockburn.—Did you say anything to Dr. Achilli besides calling him?

Witness.—I did not even call him; but my intention was to call him for the purpose I have mentioned. (Sensation.) I was still up stairs with a light when they came to the door.

Sir A. Cockburn.—Did your husband call you to bring the light?

Witness.—No; but I, wishing to go down and speak to the gentleman, brought it down.

Sir A. Cockburn.—Did you hold it up to the gentleman's face?

Witness.—No; but I had it in my hand?

Sir A. Cockburn.—Did your husband say, "Worthless woman, I have caught you!"

Witness.—He tormented me, and the whole of that night he went about telling every one that he had caught me with this gentleman. (Laughter.) Two persons passed at the time, and my husband said to them, "See, I have caught my wife with this gentleman!" My husband held Dr. Achilli against the wall and insulted him in various ways.

Sir A. Cockburn.—How did he get loose?

Witness.—I don't know, for I was up stairs. I did not come to the door. I could not come. I was at the window. My mother is a laundress, and I was staying with her and my brothers before I was married. My mother has some landed property.

Mrs. Achilli, an English lady, who has been brought up in Italy, but speaks her own language well, and is young and rather comely in appearance, said: I was married at Rome in 1849. I met my husband in Paris after his escape from the Inquisition. I took a house in Shaftesbury-crescent, and had a servant named Harriet Harris, who was with me three months. I found the kitchen very dirty, and she said it was not a usual thing for English ladies to go there. I said I was not English; I have not the custom of the English ladies, and I will come when I like. She then gave me notice, but wanted to stay at the end of the month. I, however, would not allow her to stay. Jane Legge was also in my service. I came home one night at eleven o'clock, and found a young man in the back kitchen, and I ordered her to leave next day.

This concluded the evidence for the prosecution, and, it being half-past six o'clock, the Court adjourned.

## FOURTH DAY.—THURSDAY, JUNE 24TH.

The hearing of this case was resumed to-day amid continued, and even greater, manifestations of public excitement and interest than have yet been displayed. The available space on either side of the justice seat was occupied by a succession of Lord Campbell's friends; the area of the court-room, the passages, and the galleries were crammed with barristers, attorneys, reporters, divines, Italian refugees, Papists, anti-Papists, and two or three adventurous ladies. Human faces might be seen dimly peering through obscure fanlights to obtain a glimpse, however imperfect, of what was going on, and altogether the proceedings of this remarkable case were conducted to a close amid an amount of interest now seldom witnessed in Westminster-hall, and which seemed to revive somewhat of the spirit of the olden times when Protestantism was still struggling for its ascendancy.

Sir Alexander Cockburn addressed the jury in reply to the prosecutor's evidence. He said: Gentlemen, the course which my learned friend the Attorney-General, on the part of Dr. Achilli, has adopted, of laying his evidence before you after that of the defence, entitles me to address you on the evidence which he has now adduced. And, in doing so, I hope I shall be able to throw some light on the statements from which you will have to form your conclusions as to the result at which you ought to arrive. Nevertheless, if you should have been influenced in any degree to form any opinion, you will listen, in the discharge of your duty, with attention and patience to the observations which I shall feel it necessary to make in discharge of mine. Gentlemen, this case has now assumed in my mind as possibly it has assumed in the mind of everybody, a deep and most painful interest. I have not, and cannot be expected to have, any religious sympathy with the defendant, but I have an interest in the case not only such as an advocate ought always to have for his client, but an interest that justice should be done; and I have, too, that additional interest in it which is derived from the peculiar form which this case has now assumed. The issue now presented for your decision has become complicated. You have no longer to decide simply the question, on the one hand, whether the defendant has only been guilty of publishing a libel, but with full means of justification, or whether, on the other hand, Dr Achilli has been foully and falsely assailed in his character by this libel; but you have to decide the question, which now for the first time has arisen, and which is not one of less deep and painful interest, namely, by whom gross, foul, deliberate perjury has been committed in the evidence which has been given in this case; for from that question you have no chance of escape. One or other has been guilty of gross and deliberate falsehood in the case. That question admits of no compromise. There is nothing by which the conflict of testimony can be reconciled; there can be no mere mistake; no misunderstanding; no misconception—one of the two parties has spoken the truth, or has been guilty of wilful and deliberate perjury. The woman who came forward to state that Dr. Achilli was the man who robbed her of her virtue cannot be mistaken. No woman, whatever the lapse of time, forgets the man by whom she was initiated into the secrets and mysteries of life. And though I can conceive it to be possible that a licentious libertine, in the number of his victims, may forget the individuality of one of them, still, where time, place, and circumstance are brought clearly to his recollection, and the individual herself is again presented to his sight, there can be no mistake on his part. It is not possible that even in the generality of his intercourse with women a particular case should not at once present itself to his mind when under such circumstances the victim of his licentiousness is presented before him. Therefore it is that I say that one or other of these parties has been guilty of foul and deliberate perjury. The woman who swore that Achilli had seduced her from the paths of virtue, the mother who swore to having assailed him as the guilty cause of the ruin of her child, spoke the truth, or wickedly invented a story, which they came to tell on this occasion. On which side lies the truth? That is the question which you

have to determine; and in order that you should determine it rightly, and in so determining it do justice, you must bring to the consideration of the case impartial and dispassionate minds, not assuming, till you have carefully considered and weighed all the circumstances, that the truth is on the one side or on the other. I shall now, gentlemen, pass in review the evidence we laid before you, and, on the other hand, contrast it with the evidence adduced on the part of the prosecution. If you believe the witnesses whose testimony has been presented to you on behalf of Dr. Newman, you must find your verdict in his favour; if you believe that the witnesses produced by Achilli, and Achilli himself, are not perjured then undoubtedly the accusation against him is unfounded, and Dr. Newman is without defence. On which side, I repeat, lies the truth? Do the witnesses I have called declare the truth, or is Achilli to be believed when he asserts that all that they have stated is false? Many attempts will be made to prejudice your minds in deciding this question. Every topic which the great ingenuity of my learned friend can suggest, or which prejudice can possibly adopt, will be put forward, and put forward by my learned friend with all the force of the eloquence which belongs to him. He will follow me—that is an advantage. He has, in addition to that, another advantage over me—the advantage of answering instead of being answered, and the still greater advantage that he has to address those who, unless a rigid sense of impartiality interposes between them and the impulses of their hearts and the suggestions of their feelings, must offer a congenial auditory to the observations he will make. Nevertheless, I despair not in what I believe to be the truth; and I shall proceed to compare the evidence on both sides, and to point out to you as I go on what seem to me the strong and cogent grounds for your giving your credit to the witnesses for the defendant. With these preliminary observations I proceed to the case itself, and confine myself to those matters which are really worthy of your consideration. I shall follow the case through the different events of the life of Dr. Achilli, and the charges which attach themselves to him at various epochs of his career. He was educated as a Jesuit; he became a monk; he passed a portion of his life at Viterbo; thence he removed to Rome. A short time afterwards he went to Capua; from Capua he went to Naples; then again to Rome, where proceedings were taken against him before the Inquisition; then he went to Corfu, thence to Malta, and then to England. Each of these residences forms a feature in the history of his life, and I will follow him through all. I called a witness from Viterbo, who stated that he was the cause of her seduction. Is that to be believed? She appeared to tell her tale in an artless manner. She had not the advantage of a Jesuitical education, nor of a mind trained in the subtleties of casuistry and metaphysics. She told a plain tale. She said that she was a servant in a country house; that Achilli was then on a visit there; that he induced her to walk out, and made attempts upon her. He induced her to go to his convent, where she might naturally have supposed that she was under the protection of the sacredness of the place, but where he availed himself of the opportunity to debauch her. This evidence is most important, if true. Is it true? What doubt can be set against it? It is clear, from Achilli's evidence, that he has had the opportunity to investigate the past life of this woman. Since the period in question many years have elapsed. He states that he has carefully watched the movements of his enemies; yet he knows nothing against Elena Valente though he knew that she was a woman through whom it was intended to disclose these charges against himself. The plea disclosed to him the name of this particular individual; yet with all his watching there is not one word of imputation uttered against her character. I take it, therefore, that she is blameless, with the exception of this guilty transaction, in which she was misled by Achilli himself. But then it will be said that she was under the influence of the priests; and that she was told that the glory of God would be served by her coming forward to state these matters, the object of the priests being really to put down Achilli. You will, perhaps, be reminded of the Jesuits, and of the maxim attributed to the Roman Catholic Church, that pious frauds are excusable, and that you are justified in attaining sacred ends even by unholy means. Such a topic is a two-edged

sword, it cuts two ways at once. You may be told of Italian perfidy, and how little Italian statements are to be relied on. Again I say this is a two-edged sword, and may cut him who wields it. For, who and what is Achilli, on whose oath these witnesses are to be convicted of perjury? Is he not an Italian—was he not educated by Jesuits—was he not initiated into all the corruptions and artifices which are, whether rightly or wrongly, ascribed to that well-known community? When these things are talked of it is not to be forgotten that Achilli was educated and trained to subtle disputes and ingenious casuistry—that he was brought up among monks, was a friar, and a priest, and is himself an Italian. I am not guilty of saying that you should judge by such rules, but I do say that if such rules of judgment are suggested for your adoption, you will recollect that they apply with great force to Achilli, and that they do not apply to the witnesses I have presented to you; and, indeed, I cannot help thinking that if, instead of in the ordinary civil garb of a Protestant he had appeared in a monk's costume, it would have struck many of us that the man and the habit were by no means ill suited the one to the other. And if you are to be urged to discredit the defendant's witnesses because they are under the influence of the priests, I must tell you that the witness for the prosecution is an Italian, a Jesuit, a monk, and a priest. I claim for my simple peasants, unless you should see in extrinsic or intrinsic circumstances reasons to disbelieve them, at least as much credit as he can pretend to be entitled to. What interest had these women to come here to proclaim their disgrace! Was it that the confessor had told them it would be for the glory of God and the Church? or does any one suppose that Dr. Newman suborned this testimony to protect himself against this information, to effect which purpose he is ready to lay the guilt of perjury on his soul? Who supposes such a monstrous absurdity? Many of us differ from him, and we may regret his falling off from the faith in which he was born; but we all know him to be in character free from the possibility of such an imputation, free from anything which could injuriously affect his honour, morality, or integrity. Then what interest have these people to tell anything but the truth? But is there not an interest on the other side? Ask yourselves for a moment. Consider the situation in which Achilli stands. Everything he has in the world is at stake—I concede it; and my learned friend will on that ground make an appeal to your sympathy, which he will clothe in most beautiful language. But some things, at least, are clear. Whether by his own act, or by the act of the Roman Catholic Church, he is no longer a member of it, he has been driven from it. From all hope of emolument, preferment, profit, and dignity, in that Church, he has been cut off for ever. His hope of maintenance, his means of existence in this country, depend on his position as a Protestant teacher and preacher, and on the opinion adopted of him by a particular body of proselytes from the Roman Catholic Church, by whom he is looked on as a great and shining light. To his success in this respect his character is absolutely essential; and surely this is a circumstance which is deserving of your serious attention, before you come to the conclusion that what he swears is true, and that the witnesses who contradict him are false. I have made these observations on the first witness whom I presented, but they are applicable to all the rest; nor can any one doubt that if interest can be held to give a bias to testimony, Achilli's interest on this occasion is of the most potent kind. There was one circumstance connected with the story of Elena Valente, which strongly tends to show the unscrupulous character of the man whose veracity is now in question. He was prepared to have the woman called before him. She is brought. He swears that he has never before seen her. It was stated that he had seen and corrupted her at a country-house of a family named Gentili. You remember how he denied that he visited any country-house of the Gentili's. He visited only the houses of three relatives, the names of two of whom are immaterial, but the third was Christoferi. Why it turned out that Madame Christoferi, who was a widow, was by birth a Gentili, and was, according to a custom very prevalent in Italy, as often called by the name of her own family as by that of her late husband. Of this we had many instances, and the custom is perfectly well known; but what think you of the denial of the fact, when he must have known, and did know,

that the house meant was really the house at which he visited? This shows you the subtlety and casuistry you have to deal with when you are dealing with his evidence, and must put you on your guard against him. We come next to the case at Naples, that of the woman Principe. According to her statement he saw her going to church for the purpose of paying a contribution to an association formed in honour of the Virgin Mary. He beckoned her into the church, he got her into the sacristy, and there he had criminal intercourse with her. He denied the charge; but it is not clear that he was accused of it at the time, and that though an ecclesiastic, and with all the privileges of one, he was challenged with his offence in a public procession, and that it was made the subject of inquiry at the police? It is clear that there was such an association as that of which she spoke; it is clear that the matter was the subject of inquiry; and though his agents have had the opportunity of going to Naples, not a word of imputation, beyond this offence itself, is cast upon the family. And not till the scandal had become public was one word said by him on the matter, and then he caused the father of the girl to be summoned before the police, and the commissary of police made inquiries; and though in Italy everything was subservient to the Church, no punishment was visited on these poor people for having charged a member of the Church with a great and scandalous offence. Then comes the case of Garimoni, at Corfu. Achilli is charged with an improper intimacy with the wife of Garimoni. The charge is met by the denial of Achilli, and the evidence of the wife of Garimoni. But is it not clear that that charge is well founded? The learned counsel here went through the circumstances of that case, and insisted strongly on the contradictions apparent between the tale as told by Achilli himself and as detailed by Madame Garamoni—contradictions which, he contended, rendered their testimony valueless. Now, gentlemen, I will pass on to the next case that occurred at Zante, and if the balance of testimony does not apply in my favour, then I acknowledge that I altogether misapprehend what is the value of the testimony given. It seems that before Dr. Achilli left Corfu, he engaged in his service two persons named Coriboni, man and wife. Now Dr. Achilli could not have been unaware that there had been serious imputations made upon him as a moral man, imputations which, whether well or ill founded, is beside my immediate purpose to inquire; but Dr. Achilli knew that thousands upon thousands of accusations had been made against him. Unfortunate man, he has gone through a long career of innocence and purity; but somehow or other it has happened that charges have been, from envious, wicked, designing persons, promulgated against his character. Certainly it behoved such a man to walk scrupulously, but before he left Corfu he engaged Coriboni and his wife. What were they? Coriboni had been a small trader, but that failing he became a chorus singer—none of his wares, nothing was left him but his voice. Yes, besides his voice he had a wife, an attractive wife. To be sure Dr. Achilli represents her as not very well favoured, nor the reverse; but, however, I suppose she sought to make up a deficiency in the appearance of her charms by a little display of that which, she thought, might be more attractive. This Madame Coriboni, according to the evidence of several witnesses, was a person of very light estimation. She is represented to have been an absolute prostitute, her husband living upon the wages of her infamy and shame. Even supposing there were somewhat of exaggeration in this representation, I think there cannot be the slightest doubt that Coriboni was one who did not hesitate to add, by her means, to the receipts he obtained in his occupation of a chorus singer. Dr. Achilli took these two persons into his service, and without the slightest inquiry as to who or what they were. Coriboni had a fair wife, who was very likely to make herself a very convenient addition to his family. If he had made an inquiry, he would have found she was not a person fitting for a holy man to take into his own house. He did no such thing. Having arrived at Zante, Coriboni, to his utter astonishment, found himself installed as clerk in a Protestant chapel. Like Shakspeare's history of man, "he had performed many parts." Sometimes he was a trader, sometimes a soldier, at other times the priest of Iris. Conceive the astonishment



of Coriboni at being suddenly converted into a clerk in a Protestant church. He had not got through his chrysalis state. I should describe him as still in the grub position, looking to the bread and cheese. He had no great objection to becoming a Protestant clerk. He had never thought of the Protestant religion; but anything for an honest livelihood, something like Dr. Achilli himself. It is something like the distinction Dr. Achilli sets up between the religion of the head and the heart. There is a religion of the understanding and of reason, and there is a religion of the heart; but to form a religion one must be in unison with the other, or it is only a form of religion. When a man turns from the Roman Catholic Church and becomes a Protestant he is caught up by those who are weak enough to believe that every person who professes to be a convert becomes so for conscience sake, although it may be done from the most sordid motive. Take a specimen of this gentleman, who professes to have regard to the errors of Popery, and being disputed with then comes into the British dominions and establishes a Protestant church, and takes a Roman Catholic chorus singer, who is to perform a part in the sacred office in the ministry. This shows the motives of Dr. Achilli. He became intimate with Mr. Reynolds, who came forward to support this chapel, and the first time he goes to chapel he sees Coriboni officiating as a clerk, and the doors opened by his wife. Mr. Reynolds, anxious that everything should be done with a due regard to the decency which ought to be observed, is surprised to see a common woman, who had pursued the course of a prostitute with the knowledge of her husband, acting in the chapel, remonstrated with Dr. Achilli upon the impropriety of such a course. What says Dr. Achilli? Oh, no; it is indifferent to me; it is enough for me if they behave well in my house. You may say it is part of the Christian duty to extend the hand of charity and kind assistance to a repentant woman; but you do not place an abandoned woman in a situation in a chapel; it would be a stumbling-block to the various persons who came there. Such was the view of Mr. Reynolds. But Mr. Reynolds is met by a flat denial on the part of Dr. Achilli, who says Mr. Reynolds never did make any remonstrance, and that Coriboni continued to act as clerk to the end, and that his congregation increased. Mr. Reynolds says he saw from the upper window of his house indecent familiarities going on between Dr. Achilli and his servant that were altogether outrageous. They were seen by a female member of his family. He thought it necessary to remonstrate with him on the scandal he was bringing on the new establishment. He answered he should keep what servants he pleased; and on the third time of speaking to him he became in a passion, and the result was Mr. Reynolds withdrew from the congregation, and the whole thing fell to the ground. Now he is contradicted point blank by Dr. Achilli, who says he never remonstrated about these persons serving in the chapel, until after he had found it necessary to reproach him for habitual drunkenness, when he opened upon him with these remonstrances about the employment of these two people. Now, gentlemen, this is oath against oath. There can be no doubt of this, that Dr. Achilli has a very strong reason for making out his case. Mr. Reynolds does not, so far as we can see, labour under any sense of interest to induce him to swear to those things which are untrue. Has he invented these conversations? are they unlikely to have happened? But then you have the young girl, now a nursery governess. She is without an imputation; she is not an Italian; she is not a Roman Catholic, and cannot have any interest. The learned counsel then commented upon the evidence at very great length, and said, I trust you will decide according to your judgment, and not be led away by fanaticism and bigotry. I care not on which side it may be exhibited—whether by Protestants or Roman Catholics. Hold the scales of justice even, though your hands may shake with the strength of religious passion. He said, in one part, Gentlemen, I appeal to your sense of justice, to your feelings as men; and, as Christians, I ask you to look upon these things with a resolution that, however great and true religious faith and zeal may be, yet justice is one of the early born and dearest emanations from God and religion (loud cheers).

Lord Campbell said there must not be such exhibitions.

Sir A. Cockburn, after some observations on the case of Catherine Gorman, remarked on the authority which ought to be attached to the judgment of the Inquisition at Rome.

Lord Campbell said that he had examined that document, and though he did not regret having admitted it in evidence, he must remark that the first portion of it merely stated the result to which the notary who drew it up had come. It was not a formal judgment, but he had admitted it for the purpose of having any evidence which might throw light on the issues.

Sir A. Cockburn said that the document purported to be founded on certain accusations made against Dr. Achilli, for incontinence, some of which, he submitted, had been proved in the present inquiry. Now Dr. Achilli had said that no such charges had been brought before the Italian Court, and asserted, in proof of his statement, that the Inquisition had not jurisdiction in matters of alleged immorality, but only in matters of faith. Dr. Grant had, however, proved the contrary to be the fact; and this document proved Dr. Grant's statement to be true. The document sentenced Dr. Achilli for his immoralities.

Lord Campbell said that the adjudicating part did not set out the offence for which the sentence was passed.

Sir A. Cockburn observed, that this was the first time in which a judgment of the Inquisition had ever been brought forward in a trial in this country; and though it was not drawn with the formality of English judgments, it stated that Dr. Achilli confessed his immoralities, and threw himself on the mercy of the court. Dr. Achilli had said that he never was suspended from his functions, and that no charge but for false doctrine was ever made against him. This document disproved both his statements. Let not the jury be prejudiced against the Inquisition, for this was not the Spanish Inquisition, to which so many atrocities had been attributed. The learned counsel then commented severely on Dr. Achilli's refusal to answer many of the questions put to him with regard to instances of alleged immorality, although his professed object in coming into court was to vindicate his character. Is it possible that any man can for a single moment shut his eyes to the importance of such questions in determining, in a particular instance, whether a man has committed an act of carnal intercourse with a particular individual? When that individual comes forward and says, "I swear to the fact," and the person charged says, "I swear to a denial," how are you to determine between them? Is it not legitimate to inquire of that man, What are your general habits of conduct?—you, who were a monk and a priest, and had in that capacity taken an oath which implies the rigorous observance of chastity. Surely the fact that a man is in the habitual practice of breaking that vow, and transgressing that obligation, must be an element in the general consideration whether the witness is to be believed who said that he did it, or he who says that that witness has committed perjury against him. Undoubtedly a man has a right to say, "I shelter myself under my privilege,—I am not bound to blacken myself." Be it so; but your silence is equivalent to all you could say, and a great deal more. If you come here to clear your character, what matters it whether you committed an act of fornication with A, B, C, D, or E? How comparatively unimportant is a single isolated instance, as compared with the habitual course of your conduct. Now, gentlemen, I think I have gone through the whole of this case. I can only ask you, in conclusion, to bring to its consideration calm and impartial minds. It must be admitted on all hands, that, if the matters which have been alleged against Dr. Achilli by Dr. Newman be true, Dr. Newman was justified in calling attention to the character of the witness who was thus impeaching the truth of the Catholic doctrine, and the purity of the Catholic religion, and denouncing the licentiousness, and impurities, and dissolute lives, as well as the erroneous doctrines, of the priests of the Roman Catholic Church, and denouncing these, too, as matters within his own personal knowledge. You have a right and are justified in inquiring, for the public interests and the welfare of mankind are involved in it, into the conduct of the accuser and witness. That is what Dr. Newman has done; but he was not the first who did it. From his own book I have the fact, that, in the *Dublin Review*, there had been published an article

“raking up,” to use his own expression, every circumstance that could be adduced against him. I should like to know why that was allowed to sleep unvisited by any legal proceedings on the part of Dr. Achilli; and why it was only when the charges were a second time repeated that Dr. Achilli came forward, months after the first accusation? Why is this? Because, when these matters came to be thus repeated, and brought under the public attention, no doubt those under whose fostering protection Dr. Achilli had ministered in this country, and who are bringing him forward as a striking and memorable instance of a great conversion from the antagonist Church, believing that if these imputations upon his character rested unanswered, his usefulness would be entirely destroyed, have called upon him to come forward and vindicate himself from these aspersions. His everything, his all, his very existence almost is at stake in this cause; and while that, on the one hand, should induce you to give the best consideration to his case, on the other it should put you on your guard not to place implicit credence on its testimony, when it is in irreconcilable opposition to that of numerous witnesses. I ask you to take these matters into your calm and dispassionate consideration. I know the difficulty of your doing so. I have felt from the beginning the disadvantageous ground on which I was placed in maintaining the defence of Dr. Newman. We have here two great champions of these opposing doctrines,—both of them converts from the faith in which they were bred,—both of them coming forward now to assert and maintain the truth and excellence of the Church which they have joined; and I am pleading for the Catholic before a Protestant jury. I cannot but feel how difficult this is in such times as these, when we have had the spirit of proselytism again rekindled, after it has long slept and slumbered,—when the Catholic, with upraised Cross, and the Protestant, with open Bible, have entered into the arena for the dominion over the consciences of mankind. God prosper the truth, say I. We have an interest, from the natural feeling and bias of our minds, in the religion to which we belong, and in favour of the success and triumph of one of these two principles. Our feelings on these points have recently been kindled afresh, with an energy of which, perhaps, we had no notion in our times, from the conflict which has unhappily arisen. And with these feelings yet fresh in our minds, we have, in a case like the present, where these religious dissensions seem to have at last become concentrated in one focus, to decide between these conflicting champions. Forgive me for feeling the difficult and dangerous circumstances in which my client is placed. I cannot shut my eyes to the manner in which your own good and excellent feelings upon the subject of religion may, in this case, bias your understandings in determining this question. These halls, in which this inquiry is now taking place, have not to-day, for the first time, witnessed the miscarriage of justice in the cases of religious quarrels; there remain, unhappily for our fame, upon the pages of history, some unfortunate transactions which have taken place in this great hall, which is associated, I grieve to say, with the dark, as well as with the more glorious, epochs of our history. Here, then, have taken place judicial proceedings over which the historian would gladly draw an impenetrable veil, were it not that history, by holding up its beacon-light over the errors of the past, should warn us against the evils of the future; and though the days, thank God, are now past, when human life was sacrificed to religious bigotry and passion, yet there have been times when juries,—aye, juries, taken from the intelligent community of this city,—and (I grieve to say it) when even judges have lent themselves to judicial murders, for they were neither more nor less, on the score of religious zeal. These are, indeed, different times; and this is a trifling cause, compared with those. But that same feeling which then deadened men’s feelings and consciences to the higher motives by which they should have been guided and directed, may, in a minor matter like this, creep with that insensible subtlety with which they do creep around men’s minds and understandings, and may shut your eyes to the sight of truth, and your minds to the light of reason, and may induce you not to bring to this case that calm and dispassionate consideration which you would bring to any other case in which you had no object but to discharge the sacred duty entrusted to you. I ask you to give the case a

calm and dispassionate consideration ; and, if you do so, I entertain the strongest confidence that your verdict will be in my favour. [A burst of applause greeted the learned counsel as he resumed his seat, after speaking for about three hours and a half.]

Lord Campbell said, that he thought that it was better now to come to an understanding as to the questions to be left to the jury. This plea, technically, is one plea, pleaded to the whole of the alleged libel ; but it contains twenty-three charges, and he thought that, for the ends of justice, it would be very material that these several matters should be left separately to the jury. He would suggest that the jury should have a copy of the different allegations in the plea, and that they should say whether they believed, upon the evidence of the whole, these charges were made out, or any part of them, or none of them. He would adopt that course if the counsel on both sides were satisfied that it was the proper course.

The Attorney-General said, that he was perfectly satisfied that this course should be adopted.

His lordship and the jury then retired for a few minutes. On their return,

The Attorney-General replied, and after referring to the eloquent and impassioned speech which Sir A. Cockburn had addressed to the jury, reminded them that that speech was delivered before any observations had been made by Dr. Achilli's counsel on the accusations against him. All that the most bitter hatred, unbounded industry, and unlimited means could do to destroy a man, had been accumulated together, and it would be for the jury to say if the evidence was enough to crush the prosecutor, or if it crumbled itself at the touch of impartial truth. The trial was unprecedented, for the case resolved itself into charges in which Dr. Achilli, though nominally the prosecutor, stood before them as the accused. There was a privilege admitted in every court of justice in the country which had been studiously taken from Dr. Achilli. He had been removed at an early stage from the court, and had been prevented confronting the witnesses against him, and he (the Attorney-General) could only think that, his learned friends having been engaged in the examination of the proceedings of the Inquisition, had determined that in the present action the Roman form should prevail in a British court of justice. He asked the jury whether anything but a consciousness of innocence could have supported Dr. Achilli during his long examination yesterday ? His learned friend regretted that the flames of religious bigotry had been excited in the country, and he had warned the jury in very strong language not to be carried away by it ; but he (the Attorney-General) should be ashamed of appealing to such grounds. All that Dr. Achilli said in the contest between him and Dr. Newman was,—“ You, Dr. Newman, have made use of poisoned arrows ; and if you cannot justify your conduct, you must be convicted as a slanderer.” We could only judge of men by their conduct ; and, when there were these vehement attacks by Dr. Newman, we could only attribute them to that feeling of hatred which did not require any personal knowledge of the individual. Dr. Newman had shown all the zeal of a convert against Dr. Achilli, who was a distinguished convert on the other side, and hence the malice displayed by the former. It was said that Dr. Wiseman had attacked Dr. Achilli in the *Dublin Review*. If Dr. Wiseman had chosen to throw off his mask, Dr. Achilli would have joined issue with him ; but he did not ; and it was only for the first time that he discovered in Dr. Newman an adversary who was visible, and whom he might encounter in the light of day. They were both now before the jury, Dr. Newman undertaking to justify the 23 charges contained in the plea of justification. Had the charges been brought against Dr. Achilli directly he would be in a much more advantageous position than he was in at present. He had to answer for 26 years of his life, and to answer 23 charges ; yet notwithstanding these disadvantages, and the powerful addresses of his learned friend, he (the Attorney-General) felt confident that, without prejudice, and in the strict exercise of an impartial desire to do justice, the jury would be enabled to come to the conclusion that Dr. Achilli was entitled to their verdict. He thought it right, in the first instance, to bring their attention to charges on the record of which there was not the slightest

proof. It was alleged, in the seventh charge, that Dr. Achilli, on the 1st of February, 1831, debauched and carnally knew Rosa de Alessandris, and in September, 1833, was found guilty by the Bishop of Viterbo. In the 12th charge this is alleged to have been committed in the sacristy of the church of St. Gradi, Viterbo, and in the 20th charge he is alleged to have given 50 scudi to the father of Rosa de Alessandria as hush-money. Now, no evidence had been given on this subject for the defendant; but Dr. Achilli had stated that he had a relation, a nun, of that name—that her father died when he was a child—that he had never had such an accusation brought against him, and that the whole was untrue. It had been said that the papers of the police-court in Viterbo had been burnt during the revolution; but this was not a police case. Then he came to the 8th charge, in which it was alleged that in July, 1834, Dr. Achilli debauched another woman, whose name was unknown; but who nevertheless, it was said, was chaste and unmarried. (Laughter.) But the jury had it in evidence that the greater part of that year he was on a tour of visitation, with time and place given, and means of contradiction, which, had proof been attempted, would have been incontrovertible. Then there was the 9th charge, which set forth that in 1835 Dr. Achilli had debauched Vincenza Guerra at Viterbo. Now, in 1835 Dr. Achilli never was in Viterbo, but preached the Lent sermon that year and remained at Capua. It was said that he had been convicted of these things before the Inquisition, whereas the fact was that he had never been within miles of the place. The 13th charge, was, that in 1841, at Rome, Naples, and Malta, Dr. Achilli spoke against the Eucharist and chastity, and by this had corrupted various persons. Then, some persons who it was said had been debauched in 1831 appeared as again led astray by the preaching and teaching of Dr. Achilli in 1841. The 21st charge set forth that by an official document in the archives of the police-court at Naples Dr. Achilli had been convicted of habitual incontinence. In support of this charge he thought his oponents would have gone to the fountain head; but a document was produced, of the authenticity of which no evidence had been given, and which, therefore, his Lordship had excluded. Upon the charges he had mentioned no evidence had been given; and, with reference to them, Dr. Newman must be found guilty; but on the others also, on which evidence had been given, he trusted to show that they had not been substantiated. Dr. Newman alleged that Dr. Achilli was an infidel; in other words, that he denied the Scriptures and the divine origin of the Christian religion. Dr. Achilli had never been an infidel in that sense; but, if it was meant to make him out so because he did not believe in transubstantiation or in auricular confession, or in absolution, he (the Attorney-General), without the slightest levity, hoped that the number of such infidels might he daily increased, (Applause.) Dr. Achilli was then charged as a hypocrite, and in support of this passages in his own book had been referred to. The passages so quoted illustrated the struggles of a strong mind with its doubts. A reference was made to Luther, and they all remembered how his mind was bent and bowed down from year to year, and yet could any one say that because Luther had remained in the church in which he had been born and brought up until his doubts had ripened into conviction, therefore he was a hypocrite? Did Dr. Newman lie down believing in the errors of Roman Catholicism one night, and get up next morning a full-blown Roman Catholic? (Laughter.) It was alleged in charge 4 that Dr. Achilli, as early as 1826, was deprived of his faculty to lecture. Now, the only lectureship he obtained in Viterbo was in 1827; yet he was in 1826 accused of being deprived of his lectureship for an offence which his superiors wished to conceal. He continued in that lectureship till 1833; and here the jury had an example of the rashness with which the charges against him had been made. The 5th charge was, that in 1827 Dr. Achilli had already earned the reputation of a scandalous friar. It was said, "Slander well, and some of it is sure to stick." Yet two monks at Viterbo had been called, and had sworn that Dr. Achilli held a high reputation at the period referred to; and this character had been proved to have been maintained by him for ten years after. It was established that he was employed in offices of trust, as, for example, to confess persons of both sexes;

that in 1835 he was sent as visitor to the convent of Nessi; that when at Rome he preached the Lent sermons; that at Naples he was sent for to preach before the Duchess of Saxony; and that in 1837 he was appointed Prior of the Dominican Convent. Could the jury believe, with such evidence before them then, that in 1827 he was a friar of scandalous reputation? Could they think so with the fact that in 1835 he obtained his letters of secularization, which in 1839 were completed? He now came to the sixth charge, respecting Elena Valenti, dated on the 1st of February, 1831. There had been some intimation of the interest felt in Roman Catholic countries in this inquiry, that great facilities were given to persons seeking evidence, and that a Roman Catholic solicitor of great respectability was in communication with a personage high in the Romish church, whose name he wished to communicate privately to his Lordship. Why this mystery in respect of pleas to be made the subject of a judicial inquiry? Was Mr. Harting afraid that it was coming too near the precincts of the Vatican, that in the highest quarters in the Romish church so great an interest was taken in this question? The jury would remember this in dealing with the facts, and estimating the truthfulness of the evidence adduced. Elena Valenti, who had been sent over to this country for the glory of God and the honour of holy mother church, had concealed the substance of her evidence for 20 years from all but her confessor; yet her curate, who could have known nothing of the matter, was found advising her on such grounds to come over. In judging between the witnesses he reminded the jury that those on the other side were Italians, who returned to their native country when the inquiry was over, uninfluenced by public opinion, and likely, even if they failed in the truth, for the honour of the church and glory of God, to obtain a very easy absolution. Dr. Achilli, on the other hand, was bound to England, was shut out from Roman Catholic countries, and was therefore in a position to be much more relied on. Valenti and the Principes were living together; they had compared notes; and now let him refer to a curious coincidence in the evidence which they gave. The offence to the girl Principe was said to have occurred on Good Friday. In the plea of justification no allusion was made to the offence taking place in the sacristy, but when the two witnesses came here they both said so. Dr. Achilli came into court to meet the charges against him. He was ready to answer on each charge, but was pressed whether he had not been incontinent with other women. Dr. Achilli had availed himself of the privilege of the law; but was a man to be denied the justice which the law allowed him because at any period of life he might have forgotten those rules of morality which were obligatory on all? If such a question were put to the wisest and best among us, we should find it very difficult to answer in the affirmative, with truth, and according to conscience. If Dr. Achilli had come determine to deny everything, what prevented his contradicting the notion that he had ever sinned? How could his credit be impeached thereby, except from our knowledge of human nature, and our knowledge of the operation of that law of celibacy which prevailed in the Roman church? He asked the jury whether the withholding that denial did not add to the credit of Dr. Achilli's testimony in other respects. Elena Valenti gave no dates, and his learned friend said dates were not material, and he was technically right, but whether he was morally so was a different question. If Valenti had not mentioned the brothers of her mistress, there would have been a good deal in the observations of Sir A. Cockburn on that subject, but she had described them as Gentili, and not Christophili. Dr. Achilli denied ever having the slightest intimacy with Valenti, and during the 20 years that had since elapsed not a word was said on the subject. There was a most remarkable addition made by this woman to her story. A chymist, she said, came to her and told her what had been done to her by Dr. Achilli for the achievement of his own purposes; yet Dr. Dr. Achilli had not only kept his reputation, but had advanced grade by grade in the church. This was the only case made out against Dr. Achilli at Viterbo, though he was charged with five others. The observations which he had made as to Elena Valenti applied also to Maria Principe; but there was another point to which he wished to draw the attention of the jury. Charge 11 stated that

Dr. Achilli had debauched a child aged 15, and charge 12 alleged that it took place on Good Friday. Good Friday of 1840 might have been an occasion on which Dr. Achilli's memory might fasten, and therefore Maria Principe said that the act took place in November or December, and that the child was born in October. Again, when Mrs. Principe was examined as to her age, she said she was fifty-nine, and twenty-five when Maria was born. It might, therefore, have been in 1818. It was in 1840 the offence took place; and, so far from Maria being fourteen or fifteen at that time, she must have been twenty-two. Again, this criminal intercourse took place in the sacristy, according to the girl Principe, whereas in the plea it was merely stated to have taken place on Good Friday. But this was not all. In her examination, Principe spoke of only one occasion on which intercourse took place. The cross-examination proceeded on that footing, yet, when re-examined the next day, she came and stated that carnal intercourse took place seven or eight times. How had she not stated this important fact previously, and how could the jury place confidence in such testimony? Anything more hard or cruel than the course adopted by the opposing counsel with reference to the applications made by the friends of Dr. Achilli to the police at Naples could hardly be imagined. Proceeding to Corfu, he came to charge 14, in which it was asserted that Dr. Achilli committed adultery with the wives of Garimoni and Coriboni. Anything short of the entire proof of these charges was a great failure of evidence, and he contended that that had been the case. No witnesses were brought by Dr. Achilli from Italy, for obvious reasons, but there were some from Corfu. Captain Lawrence came over; he was well known to Garimoni, and Garimoni was well known to Captain Lawrence; and, as soon as the latter arrived in this country, the former left, and could not be prevailed on to return. (Laughter.) Coriboni and his wife had left the island, and could not be traced. He recited the facts adduced to prove the charge of adultery, and contended that the discrepancies pointed out by Sir A. Cockburn did not materially affect the truth of the evidence given on behalf of and by Dr. Achilli. The Attorney-General then proceeded to dilate upon the improbabilities of the testimony given by Mr. Reynolds, and his nursery governess, which, if true, would go to establish the most unblushing effrontery on the part of Dr. Achilli. He did not impute perjury to the young woman Lavanchi, but she might have mistaken Dr. Achilli for Coriboni. The appointment of Dr. Achilli to the professorship at Malta College by the London Committee was an answer to all the slanders of Mr. Reynolds, whose evidence, whatever it was worth, completely failed in establishing the crime of adultery. He now came to charge 15, and the circumstances connected with Malta College, and contended that, while the plea of justification alleged that Dr. Achilli was mixed up in the accusations against Leonini and Saccares, no evidence had been given thereof. On the contrary, it was shown Dr. Achilli was in London at the time, and he was therefore neither involved in those accusations, nor had been dismissed from his professorship on that account.

Lord Campbell suggested that the Earl of Shaftesbury might be sent for and examined on that point, and accordingly his Lordship appeared and was examined from the bench.

Sir A. Cockburn.—Were there any other reasons besides that of having sent Saccares away which influenced the committee in dismissing Dr. Achilli?

The Earl of Shaftesbury (with much emphasis).—Yes; the other reasons were as follows:—We felt that if this matter became public, so great and foul a scandal would be created in the college, and in the branch of it occupied by the ex-priests, that, out of regard for the character of the institution and of Protestantism, we ought to cut the Gordian knot by getting rid of that portion of the establishment and dismissing Dr. Achilli, whether he was innocent or not. (Sensation.)

The Attorney-General felt under the greatest obligation to his Lordship for thus ascertaining the entire truth, because there could be no doubt now of the grounds on which Dr. Achilli was removed. So far from making out the charge against the conduct of Dr. Achilli, it had entirely failed, and the matter

was set at rest for ever. As to the cases of alleged adultery in England, and the charges founded on them, it appeared that as time ran on the witnesses became stronger and stronger in their accusations, until the whole ripened into a statement to which it was impossible to add. In none of these instances was a complaint made to Dr. Achilli or his wife; and, as to the testimony of Jane Legge, the fact that the Legislature required, in cases of affiliation, corroborative evidence proved how easily such evidence was got up, and how difficult it was to be rebutted. Two of the witnesses were admitted to be bad characters, and on no occasion did Dr. Achilli appear to have done anything to stifle the facts. Sarah Wood had mentioned that Dr. Achilli had given her a religious book; why was that book not produced? Assuming the fact stated by Catherine Gorman to be true, it amounted to nothing; and it appeared that, though Dr. Achilli had been there for months subsequently, nothing had occurred. He now came, in the last place, to that most extraordinary document which emanated from the Holy Inquisition. He quite agreed in the propriety of admitting that document *valcat quantum*, for there was a plea that Dr. Achilli had been pronounced guilty by the Inquisition, and that punishment had been awarded him. It was the first time that such a judgment had been put in evidence in this country, and he trusted that it would be the last. In 1831 Mr. Harting went to Rome, and, in some way or other, a person whom Mr. Harting wished to shroud in mystery interfered, and obtained the judgment. This was Monsignore Talbot, the Pope's secretary; and Mr. Harting thought it would be prejudicial to the case to reveal that fact. So secret were the proceedings of that court, that even a gentleman, now a bishop of the church, who went for papers, was not allowed to enter, but the clerk delivered them to him. There was no examination of copies with originals, and, in fact, they did not know whether such originals existed at all. The document referred to was not a transcript of proceedings, but an account, by the notary, of what the proceedings contained. This document was obtained in September, 1851, and the pleas were put on record in February, 1852, so that the pleas were first founded on the document, and the document was now used for proving the pleas. Again, Dr. Achilli had ceased to be a monk in 1839, and yet, by the judgment now produced, he was sentenced to seclusion in a monastery "of his order" of more strict observance.

Lord Campbell said he must take the document as evidence of the fact that the Holy Inquisition did pronounce such a sentence in 1841.

The Attorney-General did not see that in that respect its reception was very important, and it certainly did nothing to prove the truth of those charges to which it referred. He had now gone through the case, which had engaged his deepest anxiety and interest, accompanied by a constant sense of his own inability to do it justice; and, in committing it to the jury, he appealed to them whether he had endeavoured to excite any of those prejudices to which his learned friend had referred; whether he had not endeavoured to relieve the question from those religious considerations in which his learned friend had described it to be involved? He had presented to the jury the case of a man who, under circumstances of unparalleled difficulty, had been called before them to answer for a very considerable portion of his life, on charges of the most serious description, and which necessarily embarrassed and complicated one another. He (the Attorney-General) had endeavoured to disentangle them from the complexity in which they were involved. He had endeavoured to secure that their duty should be discharged in the way most desirable by an application of their minds to each distinct charge, and the evidence in their possession in regard to each. He was sure that the more the case was sifted, and the more the light was let in upon it, the better it would be for Dr. Achilli. It was a perilous issue that awaited his client, but he reposed with entire confidence on the force of truth and on the impartiality of the jury. (Applause.)

Lord Campbell then proceeded to sum up. He said, that some apprehensions had been expressed that the jury might be actuated by religious prejudices. Even had the credit of the Protestant religion been at stake, he assured them that he would look with confidence to them for a verdict founded



upon the evidence before them. But he could not see how it could be said that in this case the credit of the Protestant religion was at all involved. The character of Dr. Achilli was at stake in the deepest manner; but the charges which were imputed to him took place when he was still a priest of the Roman Catholic religion, and he (Lord Campbell) could not see how it affected the Protestant faith that a Roman Catholic priest pretended to come over to the Protestant persuasion and had no credit for his professions. Then, as to Dr. Newman, there was no danger of his being looked upon very unfavourably, though he had left the Protestant religion, and had, it was said, become a zealous champion of the Roman Catholic faith. What his Lordship disliked to see was clergymen remaining in the Protestant church who wished to be Roman Catholics; but when a man of piety and honour stated that he did not belong to the Church of England, and resigned his position in that church, and all other advantages arising from it, there was no reason to doubt the sincerity of such conduct. He must say that Dr. Newman, in attacking Dr. Achilli as he had done, had acted rashly and recklessly, even though he believed in the truth of what he said. He had asserted a number of things of which he had no personal knowledge; but he must do him the justice to say, that when an application was made to his booksellers for his name he at once stepped forward. This being a criminal information, all that the Court had to see was that there were reasonable grounds for bringing the case before a jury; and there seemed to be no doubt that the statements made by Dr. Newman affecting Dr. Achilli amounted to a libel. Two pleas had been placed upon record, the first of "Not guilty;" and there could be no doubt that the verdict of the jury upon that plea must be for the prosecutor. Formerly that would have been the only question to determine; but now the law was altered; and those who were charged with libel had an opportunity of alleging in justification that they had stated the truth, and were actuated by laudable motives. That was a great improvement in our jurisprudence; for it had taken away the reproach embodied in the saying, "The greater the truth the greater the libel." It would be for the jury to say on the evidence before them whether the various imputations justified in the second plea by Dr. Newman had been established. As to some of those imputations, hardly any proof had been adduced, while upon others most serious evidence had been offered; and it would be for the jury to say whether they believed that evidence, and whether they considered the allegations in respect of them proved. They would be furnished with a copy of those charges, and he would have to ask them whether they believed that all or any of them were true, and, if some, which. They might find that none were true; they could hardly find that all were true; and perhaps they might think that certain material ones had been established. After the eloquent speeches which they had heard from the counsel on either side, and which would have done credit to the English bar in its brightest days, they could not come to a satisfactory conclusion without having the evidence read over to them; and he, therefore, proceeded to do so. This occupied his Lordship from shortly after five till half-past eight o'clock; and in laying before the jury the substance of his notes he very sparingly alluded to the question of credibility as between conflicting statements. There were, he said, improbabilities in the story which was told by Elena Valente, and which, as far as he observed, were uncorroborated; but, if her statement was trustworthy, the sixth charge must be held proved. The evidence of Elena Valente appeared after a lapse of twenty years now to be brought forward for the first time; but that of Maria Principe was one of old standing, and therefore it was one of a very serious character. Dr. Achilli denied it; but it was clear from the evidence brought forward that complaint had been made at the time, and that the matter was not invented to suit the present emergency. The evidence with reference to Garamoni's wife he considered not at all satisfactory, as it only amounted to a meeting in the dark under suspicious circumstances. His Lordship read carefully over the evidence with regard to Coriboni's wife, and, with a caution as to the testimony of Mr. Reynolds, left it to the jury to pro-

nounce on that charge. On the transactions at Malta, the sending away of Saccares, the action of the London committee thereon, and the subsequent evidence as to alleged immoralities in London, his Lordship went steadily through his notes, never offering more than a short passing observation. He then repeated his previously-expressed view of the document purporting to be a judgment of the Inquisition on Dr. Achilli. He declared it not only to be admissible evidence, but very strong evidence, that such a sentence had been pronounced. The Court of the Inquisition was presided over by men of learning and piety. They had issued the paper in question as a document to be used in a court of justice; and he could not suppose that they wished to practise any imposition. The causes for which the sentence was pronounced formed a very different matter; and the probability was, that it related more to a charge of heresy than to one of immorality. Dr. Achilli said that it was heresy, but that was a question for the jury to decide. His Lordship treated the occurrence of the plaintiff's name in the proceedings between Garamoni and his wife as unimportant upon the merits of the case, and he disposed in a similar way of the vows of chastity and poverty taken by the Dominican monks. These, he said, were vows contrary to human nature, and were not very material. On Dr. Achilli availing himself of the privilege of the Court, and declining general questions put to test his chastity, his Lordship observed that such a course, while it gave increased probability to specific charges, also increased his credibility as a witness. Dr. Achilli, it might be said, had broken his vows of celibacy by entering into the holy state of matrimony, but that ought not to lower him in the opinion of the jury, for they all knew that Luther had married, and that, too, in London. When the reading of his notes had been completed, his Lordship said that the jury had heard the evidence on both sides. He referred them to an abstract of the plea of justification [contained in the report of Tuesday, the 22nd], and he asked them to say, whether they found any of the allegations proved; and if so, which of them? He had done his duty in the case; and he was sure they would do theirs.

The jury then (at about half-past eight) retired. They did not return into court until eleven o'clock.

On their return it was asked, "Are you agreed on your verdict?"

The Foreman.—Yes; on the 19th charge we find proved. All the rest was found not proved. (Sensation and partial cheering.)

Lord Campbell.—The 19th charge respects Dr. Achilli's being deprived of his professorship and prohibited from preaching and hearing confession. You find that to be proved?

The Foreman.—Yes, my lord, proved.

Lord Campbell.—And you find none of the other allegations proved?

The Foreman and several Jurors.—No, none of the others. (Here the people in the court, beginning to understand the verdict, burst out into a vigorous cheer, which no one attempted to suppress.)

Lord Campbell.—With regard, then, to the plea of not guilty. The first plea is not guilty. You see that involves the publication, and the question whether it was of a libellous nature.

A Juror.—Not guilty. That's what we find.

Lord Campbell.—No, understand me. The first plea is not guilty; and that involves the question whether it is proved that the defendant published this alleged libel, and whether it be libellous. Do not mind the truth of the charges at all. As to this, say only on that do you find him guilty, and that it was of a libellous nature?

The Foreman.—Yes, guilty.

Lord Campbell.—On that you find him guilty. There is then a verdict for the Crown on that. Then we come to the justification; and on the justification you find that the only part of it which is proved is the 19th, respecting Dr. Achilli being deprived of his professorship and prohibited from preaching and from hearing confession.

A Juror.—Yes, that is the verdict.

Lord Campbell.—Wait a moment; and let me see. That is (after a pause), you find that that is true which is alleged in the decree of the Inquisition, as far as that decree goes?

A Juror.—Yes.

Lord Campbell.—So far as that decree goes. You don't find as to the reasons for the decree, but as to the decree itself?

The Foreman.—Yes, only that.

Lord Campbell.—Very well. Then you find it to be true that Dr. Achilli was suspended from the celebration of mass, prohibited from any cure of souls, and from preaching, and from hearing confession, and from exercising his sacerdotal office in any way, according to the decree of the Inquisition. And all the rest you find not to be proved?

The Foreman.—Not to our satisfaction.

Lord Campbell.—Very well. Then on the justification I direct a verdict to be entered for the Crown, on that issue as well as on the plea of not guilty; and that special finding I, of course, will report to the Court when necessary. (Here again a loud cheer was given by the thronged court.) I now discharge you, gentlemen, from your attendance, and beg to thank you. (Renewed cheers.)

A Juror.—I beg your Lordship to understand that we did not consider this case as regards Protestantism and Catholicism. We only look at it as a matter of fact.

Lord Campbell.—Oh, I am sure you have dealt with it conscientiously.

Another hearty cheer was now given, which the learned judge did not for a moment attempt to check.

The jury were then discharged; and thus ended this extraordinary and memorable trial, having occupied the Court in all, fortythree hours. It is but fair to say that, during the whole of the proceedings, the jury paid undivided and unwearied attention to the mass of evidence which was laid before them, evincing an anxious and earnest desire to make themselves masters of the case to its minutest details. Of Lord Campbell it would be unbecoming for us to say more than that his conduct was marked throughout the whole case by that dignity and impartiality which have always attended his judicial character, and, if anything can add to the high reputation of that noble and learned judge, it will be his presidency on this occasion. We should also wish to add our tribute of respect to the able and impartial manner in which the interpreter originally engaged for the prosecution, but whose services were afterwards adopted by both sides, discharged his duty. The Lord Chief Justice and the leading counsel on each side alluded in the most complimentary terms to his conduct throughout the whole trial, and we never remember an instance in which this task, at once so important and difficult, was more efficiently discharged. We need scarcely say that the Court was most densely and inconveniently crowded during the whole course of the trial. The delivery of the verdict was received with unmistakable signs of approbation, which were with difficulty suppressed while his lordship remained in Court; but after his departure they broke out into loud hurrahs, which drowned most completely the hisses and groans which the friends of Dr. Newman in Court attempted to raise.

The 19th charge, which is the only one which the jury have found proven, is as follows:—That on the 16th of June, 1841, at Rome, by the Court of the Holy Office or Inquisition, the said G. G. Achilli was suspended from the celebration of mass, and disabled from any cure of souls, and from preaching and hearing confessions, and from exercising the sacerdotal office.



# REPORT

OF THE

## TRIAL AND PRELIMINARY PROCEEDINGS

IN THE CASE OF

THE QUEEN ON THE PROSECUTION

OF

G. ACHILLI *v.* DR. NEWMAN.

WITH AN INTRODUCTION,

CONTAINING

COMMENTS ON THE LAW AND ON THE COURSE AND CONDUCT OF THE TRIAL; ALSO  
WITH THE PLEADINGS AND AFFIDAVITS; AND COPIOUS NOTES, PARTICULARLY  
ON THE CONSTITUTION AND PRACTICE OF THE COURT OF INQUISITION.

BY W. F. FINLASON, Esq.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW,

*Author of "Leading Cases on Pleading," "Charitable Trusts," &c. &c.*

"Let not the sheep discard their clothing because the wolf sometimes conceals himself therein."—ST. AUGUSTINE.

"The devil hates all Christians, but especially monks."—ST. ATHANASIUS.

LONDON :

C. DOLMAN, 61, NEW BOND STREET,  
AND 22, PATERNOSTER ROW.

1852.



## P R E F A C E .

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SUCH serious legal, moral, and religious considerations are involved in this case, that its publication, in a correct form, is clearly required. It has been said that the trial could only cause scandal: if it were so, Dr. Newman would not be responsible; for the prosecutor had previously published charges—gross and sweeping—involving the great body of the Catholic clergy, and Dr. Newman came forward to destroy the mischief of the scandal by removing its generality. He said “Thou art the man! These things are true, of yourself!” Moreover, there can be no scandal to the Catholic Church; for the prosecutor confesses, that from 1829 he had doubts as to her doctrines,\* and soon after disbelieved; nor to the Protestant, for he avows, that for many years after he was perfectly persuaded of the imposture of the Catholic doctrines, he continued zealously to teach them, and to perform a worship he believed to be idolatry. To what religion can his history now be fairly said to cause scandal? †

If it be said, that supposing the charges against him to be true, he must have been connived at in the Catholic Church, the answer is to be found in the evidence. The first case sworn to was about 1830,

\* See the admissions of his book, proved as part of the evidence.

† It would be absurd to take our ideas of monastic life or discipline from the character of Achilli, who says he “never was a monk.” The Carthusian Sutorus says, “Non est domus in qua non jaceat mortuus.” And St. Augustine says, “I dare not pretend that my house is better than Noah’s Ark, where among eight men one reprobate was found.” In a poem respecting the religious orders, written about the end of the twelfth century, the source of all danger to the cloistral discipline was thus pointed out:—

“Qui sunt in claustro quasi Sathan in paradiso,  
Plurima falsorum sunt vere pericula fratrum,  
Et venit a falsis fratribus omne malum.”

*Mores Catholicici*, b. x. c. 9.

Digby says, — “Doubtless there might be found at times some counterfeit, in whose hood the dark bird nestled, of which Dante speaks; but such impostors were sure to be unmasked at last, and driven out.” Let the reader refer rather for his ideas of religious life to A Kempis than Achilli.—See the *Imitation*, b. i. c. 17—18, 25.

and extends over a year ; and he admits that in 1833 he was forced by the general of the order to leave Viterbo ; that from that time he went from place to place ; that in 1835 the Pope was desirous of his removal from the order ; that he would not remove until 1839 ; that in 1837 these charges were unknown against him in Rome ; that from that time until 1840 he was at Naples ; that in the spring of 1841 complaints were made as to the case of Principe before the police ; that in that same year he was in the prisons of the Inquisition ; and that he was forthwith sentenced to perpetual suspension from the priesthood.

Can it be said there was connivance, any more than in the case of those respectable gentlemen, the Committee of the Malta College, who, when they engaged him, of course had not heard the “unpleasant statements as to his past life,” which he refers to in his affidavit ; but, after they had heard them, dismissed him,\* without going into those matters, for “fear of the scandal which might be caused to the Protestant religion.”†

Again, can scandal be caused by this case as to the confessional, when it appears that the sins committed had nothing to do with it ; but on the contrary, were prevented when the instructions received there were regarded, and only occurred when they were disregarded ? and when, further, it appears that persons not disposed to abandon sin, do not go to confession ; and *when* so disposed, are *reclaimed* by it ?‡

‡ As little can the Catholic Church have to fear from the disclosures of the case as to the Roman Inquisition ; § for in the instance of Achilli no heavier punishment is awarded after he had for some years, as he avows, been perverting persons from the Catholic faith, than a few months’ imprisonment—which he himself calls a “slight correction.”

\* And why should stress be laid on the direction of the confessor to the first witness not to disclose the matter, as it was the case of an ecclesiastic, more than on the resolution of the Malta committee ? or why should suspicion be excited by the direction of the confessor to come forward and tell her story, more than by the most creditable advice of the vice-president of the college to a Protestant witness to do so ?

† See the evidence of Lord Shaftesbury.

‡ Let the reader refer to the evidence of the Italian women, and compare it with that of the English ; the former were reclaimed,—not so the latter, except one out of three ; and that was at an asylum half Catholic.

§ Which has nothing to do with the Spanish, the cruelties of which were rather political than religious, and always restrained by the See of Rome. See even Ranke. See also Balmez.



With regard to the formal result of the trial, it would be of very subordinate interest even had it been a fair trial. But public opinion has pronounced it was *not* a fair trial. The *Times* has stated, in an able and eloquent article, which shows how prejudice *can* yield to a sense of justice,—

“ We consider that a great blow has been given to the administration of justice in this country, and that Roman Catholics will have henceforth only too good reason for asserting that there is no justice for them in cases tending to arouse the Protestant feeling of judges and juries.”

The moral value of the verdict may be estimated from a few facts. Not one witness for the defence was involved in any contradiction, whereas Achilli was contradicted by his own witnesses and by himself. On the worst of the charges, even the Lord Chief Justice went far towards saying it was proved;\* on another he said it *was* proved;† and the jury who have found both of them *not* proved, have found that a third was proved,‡ in flat contradiction to the oath of the prosecutor, on whose oath alone they found all the others disproved!§

Nor is this all. The counsel of Achilli shrunk from putting him into the box until he had read all the evidence that could be adduced against him; and then swore only in the negative of the charges as pleaded, which the defendant had previously been compelled to plead, with the strictest particularity and precision. ||

It is stated in a text-book of the highest authority,¶ that “there are numberless cases of false verdicts without corruption or bad intention of the jurors. They may have *heard too much of the matter before the trial, and imbibed prejudices without knowing it.*” And when it is remembered that Achilli’s book and speeches, and articles of the same character, had been for some time in very general circulation among the class from which most of the jurors came, it is conceived that this very much augments the justice

\* That of Principe.

† One of those about Garamoni.

‡ As to the judgment of the Inquisition.

§ See his affidavit and his evidence.

|| And how he swore may be appreciated from two specimens. He swore he had not visited a lady, “a Gentili,” because, though that was her maiden name, she had married; and he swore (see his affidavit) that he did not rob of her honour, &c., when his own counsel suggested (see note to plea), that this might mean only that she had no honour to lose!—See his cross-examination also as to the way in which he answered.

¶ Tidd’s Practice, vol. ii. p. 905, ninth edition.

and the importance of holding the libel privileged on the score of public discussion; the general and personal question being so mixed up as to make it practically impossible to separate them. For instance, the question as to the Inquisition (on which, really, the verdict greatly turned), is whether Achilli was dismissed for heresy or immorality,—which, though in itself a personal question, is closely connected with popular prejudices as to that Court.

In a strictly legal point of view, that part of it which relates to the judgment of the Inquisition is the most interesting. And here it suffices simply to state, that while the Lord Chief Justice held that the reasons referred to a mere resolution of dismissal by a committee of gentlemen sitting in a private room, must be taken as the reasons of the dismissal—with any others which they might be able to state; he held, as to a solemn judgment of the supreme court of a sovereign state, that it must be shown that the court had jurisdiction, though the judgment was authenticated by a secretary of state, and the officers of the court; and that then it was open to the party concerned to impute to it, without the least attempt at proof, fabrication and forgery; and that, though he held part of it unquestionably genuine, the rest might be discarded, forming an integral, and the most material portion of it; as reciting the reasons on which it was founded, and the confession of the party sentenced!

If there were no other reasons for publishing this report, it would be found in this fact, that though Achilli's book was part of the evidence, the attention of the jury was not directed to the admissions it contains, which are now carefully set forth, and the effect of which, it is conceived, must be decisive, even upon those who might have had doubts before.

It may be said, that, until now, the profession and the public have not had an opportunity of really considering the whole of the evidence for the defence; and if their opinion has hitherto been in its favour, it certainly will be far more so now. Moreover, facts are now in evidence, which, had they been disclosed to the Court on the original application, would surely have been deemed an answer to it; and even now appear to be reasons against judgment.\*

\* The Court will not interfere by granting a criminal information where the attacks complained of have been caused by the intemperate language in publications by the party complaining, although such publications arose from inquiries made in pursuance of his duty. Therefore, where a clergyman had, in the course

The legal bearings of the case are (as well as the moral) discussed with some care in the Introduction, and the reader is requested especially to consider that part of it which is devoted to prove that the rule ought not to have issued at all; or that the libel was privileged, and that, in the absence of express evidence of malice, Dr. Newman ought not to have been called upon to prove its truth.

Be that as it may, in the language of a respected barrister, at the close of the evidence for the defence, "Dr. Newman is morally vindicated." And it may be added, what is far more important, the Church is vindicated too.\*

HARCOURT BUILDINGS, TEMPLE,  
July 16th, 1852.

of inquiries as to certain charities in his parish, published pamphlets reflecting in no measured language upon the character of his opponents, the Court discharged a rule that he had obtained for a criminal information, in respect of certain attacks made upon him, by way of recrimination; but they intimated that if the attacks were renewed, a criminal information would be granted.—*Reg. v. Hall*, 7 L. T. 136.

\* If anything were wanted for *that* vindication, the following will complete it. It must be premised that the jurisdiction of the Holy See as to the religious orders, is, after their establishment, rather appellate or ultimate, than original and immediate.

"Advices from Rome, in the *Univers*, under date the 14th ultimo, mention a change of great importance to the Dominican Order. About two years ago the Very Rev. Father Jeandel was summoned by his Holiness to reside at Rome in the capacity of Superior-General of the Order of Friars-Preachers, but with the title only of Vicar-General. This ecclesiastic has now been appointed Provincial, in the place and stead of the actual titular, who, with several other Superiors of some of the twenty-two houses of which the Roman province is composed, has just been deprived. Father Jeandel will henceforward exercise over those houses a full and entire authority. The following are the details of this incident, which is considerable, by reason of the consequences which it cannot but have with reference to the Religious Orders. Everybody knows that for a long time the Holy Father had ordered that in such of those institutes as had varied a little too much from the primitive rule, they should re-enter the rule gradually and without any violent changes, by the door of the noviciate. Most of the Orders obeyed the wishes of the Supreme Chief; and in particular the Benedictines, by the choice they have made of a General completely devoted to the reform, have caused the Holy Father one of those rare satisfactions which console him in the midst of the sorrows he has to endure. The house of Sta. Sabina was chosen for the noviciate of the Friars-Preachers, and for the two years which have scarcely elapsed since Father Besson has been directing it, in spite of the state of poverty and distress in which the convent was placed, the number of subjects he has furnished have reached the almost incredible number of eighty. Well, in spite of this, and although the more aged members who inhabit the other houses were left in their *statu quo*, some of them, and unhappily among those several Superiors, declared themselves hostile to these changes, which, however, did not affect themselves, to such a degree that they made open opposition against the Superior of the Noviciate and the Vicar-General of the Order, F. Jeandel; and went so far as to draw up against them a memorial, which they presented to his Eminence Cardinal della Genga, Prefect of the Congregation of Bishops and

Regulars. A sufficiently curious fact is that, moved, doubtless by a sentiment of loyalty, they thought it their duty to communicate this to F. Jeandel, who replied to them : ' You represent me, my Fathers, under very black colours. I am what God sees me, and neither more nor less ; but I engage, for your own sakes, above all, not to present the memorial to the Cardinal.' Without attending to this hint, the memorial was presented, and we have stated the result, which transpired after an audience which Cardinal della Genga had a few days ago with his Holiness."

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## INTRODUCTION.

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THIS case appears to form a great fact in the social history of the country, and to illustrate a great feature in its moral character, viz., its blind and bitter prejudice against the Catholic Church and the religious orders, which have ever been her noblest ornaments; those religious orders to whom the English people owe their conversion to Christianity; all their cathedrals and most of their colleges; the preservation of learning, and the transmission of the light of truth through the middle ages, the "ages of faith." What were—what are, those religious orders? Let the reader (if he have not already learnt) excuse a few fragments culled from the most magnificent work of modern times.\*

"What else is it to say" (writes Peter the Venerable), "Omnia quæ habes da pauperibus et veni sequere me," but "become a monk." Even Michelet observes (speaking of the Franciscan order—the twin order of the Dominican), that their love of poverty (common to both orders) was an effort to escape alive from the conditions of this life, from the servitude of matter, to conquer and anticipate here below the independence of a pure spirit. Our own St. Anselm defines the object of the monastic discipline as "purity of heart, and the end everlasting life." The Benedictine rule, which, at the time of the reformation was prevalent in England, is thus described: "Status vitæ innocentia secundum eximii P. Benedicti normam." The venerable Bede gives as the reason for the monastic life, the necessity for escaping the distractions of society. St. Richard, archbishop of Canterbury, in the reign of Henry II., writing to the Cistercians, says, "Let the professors of the order keep the footsteps of apostolic religion in moderation of food and raiment, in watching, in confessions, in discipline, in psalmody, in humility, in hospitality, obedience, and all other fruits of love." St. Francis says, "The rule of life of the friars minor consists in observing the holy gospel of our Lord Jesus Christ, living in obedience without property and in chastity."

Our own Saxon laws ecclesiastical thus spoke of the monastic life:

"It is right that monks, by day and by night, with inward heart ever think of God, and earnestly call upon him, and with all humility regularly live, and always separate themselves from worldly occupations as they best may; and do as is their duty, ever care how they

\* *Mores Catholicæ.*

best may please God ; and all that perform which they promised when they took order : to attend diligently to their books and prayers, to learn and teach as they best may ; and every pomp and vain pride, and separate property and useless deed, and untimely speech, wholly to despise, as is befitting monks. But it is truly an evil that some are too arrogant, and too proud, and too widely erratic, and too useless, and altogether too idle in every good deed, and with inclination to evil deeds, in secret profligacy, inwardly heartless, and outwardly indignant. And some are apostates who ought, if they would, to be God's soldiers within their minsters. Such are those who have cast off their shepherds, and who continue in worldly affairs with sins. It goeth ill that those men in orders, who through fear of God were whilom the most useful and most laborious in divine ministry, and in bookcraft are most useless and never labour strenuously, but do all for lust and ease, and stroll and wander. That is a hateful life ; it is also worse that the superiors do not amend it, nor some conduct themselves as they should : but it is our duty to amend it."\*

Mabillon proves that the first monks of England followed the rule of St. Benedict, "which" (says Michelet), "is a rule of good sense, a rule of labour, grave and practical ;" and many cathedrals of England were served by them from the age of Ethelbert to the Reformation. St. Dominic made choice for his use of the rule of the great St. Augustine, adding certain particular constitutions,—as the rule of perpetual abstinence from flesh, and great fasting. He took all possible precautions to enforce poverty in the order, and preserve its discipline. He himself founded monasteries in Canterbury, London, and Oxford. Bishop Tanner counts forty-two houses of the preaching friars (as they were called) in England, at the dissolution of the monasteries. From their black hoods and cloaks, they were called in England "Black Friars." Stevens states that the order was at the end of the last century divided into forty-five provinces. A modern Protestant writer † says, "The Dominicans and Franciscans were renowned for their profound learning and unquenchable passion for knowledge ; wearing the garb of most abject poverty ; renouncing all love of the world ; refraining from, and rejecting, all fixed oblations or state endowments, and adhering to a voluntary system for support, they wrought a powerful change in the ecclesiastical and collegiate learning of the fourteenth and fifteenth centuries ; and by their charity, devotion, and strict austerity, gained the respect and affections of the people."

Sixty-six cardinals, 460 archbishops, and 2,316 bishops have worn the habit of St. Dominic ; simple friars, without birth or fortune, who had been chosen only through regard to their virtue. St. Vincent Ferrer, of this order, was renowned all over Europe for his eloquence, and was specially invited by the king of England to preach in this country, which he did with enormous success.

Walter Beaulere, chancellor of England, in the reign of Henry

\* *Ancient Laws of England*, vol. ii. Ecclesiastical Institutes.

† Merryweather's *Bibliomania* ; a most excellent little book ; full of facts.

III., and bishop of Carlisle, took refuge in the order of St. Dominic, abandoning all things, even to his cloak (says Matthew Paris), when he entered the convent at Oxford. Henry III. of England had for his confessor John of Darlington, a Dominican of great sanctity and erudition.

In the thirteenth and fourteenth centuries, the great schools of the Franciscans and Dominicans drew multitudes to their convents. More than 700 friars at a time, from every part of Europe, have been known to resort to the Franciscan convent, at Paris, for the sake of study. The scholastic halls of the convent were particularly grand. There were two lectures on theology every morning, and two every afternoon on the Holy Scriptures.

The English Franciscans were especially learned towards the end of the thirteenth century. Then shone Roger Bacon, Henry Willot, Thomas Dorking, William of Ware, John of London, and Richard Middleton; the last of whom is commemorated with fourteen other chief doctors of his order on the tomb of Duns Scotus at Cologne.

St. Thomas Aquinas, the great luminary of the order, was accounted the most marvellous man in Christendom; and to this day his works are read with more reverence, perhaps, than any other since those of St. Augustine—his great model and master. St. Thomas it was who wrote the celebrated treatise *Contra Impugnantes Religionum*, which forms the most complete defence of the religious orders.

“How deeply interesting” (says Digby) “is it, even now, to visit the monastery of St. Dominic, at Naples—one of those great schools whose masters possessed such an empire; and where St. Thomas of Aquinas composed many of his works, and taught theology.”

“It is a curious fact” (Digby says) “that science itself owes much to the intercourse of the great with the monastic orders. Had it not been for a Franciscan prior and his friend, a Dominican (confessor to the king of Castile), who recognised the merit of Columbus, and obtained from the king three ships, in 1491, Columbus would have been obliged to abandon his enterprise.

The mendicant orders produced men of profound erudition. Joseph Scaliger, writing to Casaubon, tells him to search in the king's library for some notes of a Dominican friar, on the Alcoran, which would greatly assist his studies. The Dominican library of St. John, in Venice, is described by Tomasini and Montfaucon. The Dominican library of St. Maria Novella, Florence, vied with that of the Franciscans of the Santa Croce. And the libraries of monasteries were public, for they were open to every one.

The library of the Dominicans, in London, was well stored with valuable books. Leland mentions some of those he found there; and among them a Bible in the vulgar tongue.

The order were renowned for their love of study, and were fond of the physical sciences. In fact, by their learning they drew scholars from the universities to their schools. Such was the character of religious orders.

What is, at this very day, the religious life? "When I was at Camaldoli," says Digby, "the monks used to begin matins in the church at half-past twelve; at three they returned to take repose, and at five rose for the day. In the Carthusian monastery of La Parti Dieu, on the mountains of Freyburg, the monks rose at eleven, and remained in the church till two; they then returned to rest till five. The day closed with them at seven in the evening, when they retired to rest. Such was and is the monastic life. Such it was in substance in all the orders, Franciscan, Dominican, or Benedictine. St. Dominic bore a wonderful great respect to all other religious orders, and an eminent Franciscan says, "There is no order in the whole church in which a good man cannot be saved, and in which a bad man will not be condemned. So that whether we take the habit of St. Benedict, or St. Dominic, or St. Francis, it matters not, since they are all holy habits, constituted by holy men." True to these instructions, the great poet of the ages of faith in his Paradise represents St. Bonaventura, the Franciscan, proclaiming the praises of St. Dominic, and St. Thomas Aquinas, the Dominican, celebrating those of St. Francis, each blaming the irregularities, not of the other's order, but of that to which he himself belonged. Of course there were occasional abuses; but there were well understood ways of eradicating them. Good monks set a good example, and if they left their monasteries, it was not to withdraw from their order, but to found better monasteries.

"It is to be observed" (says Michaud), "that the monks who wrote chronicles of their order, or monastery, were careful to mention and record whenever an irreligious, or, as they called him, an unhappy abbot, ruled; and whenever the monks forgot the spirit of their institution, by living to themselves rather than to Christ. They never fail even to mention at what epochs discipline was in the least relaxed; and when there was no attempt to correct them."

Sometimes we find, when a monastery fell under the dominion of an evil superior, the monks who persevered in sanctity fled. Thus St. Richard, prior of the Benedictine monastery of our Lady, in York, with twelve others, desiring to serve God according to the rule, and restore the ancient discipline, left the monastery and founded the far-famed Abbey of Fountains, in 1132. This was often exemplified in the mendicant orders: thus, in the Franciscan, an English friar, named Adam, was treated as seditious, for opposing a superior, who wished to alter the discipline of the rule; and appealed to the pope, who caused the deposition of the superior.

A Protestant writer thus speaks of the mendicant orders:\*

"Much as the friars have been condemned, and darkly as they have been represented, I have no hesitation in stating, that they did more for the revival of learning and progress of English literature than any other of the monastic orders. We cannot trace their course without admiration and astonishment at their splendid triumphs and success;

\* *Bibliomania in the Middle Ages*, by Merryweather.



they appear to have acted as intellectual crusaders against the prevailing ignorance and sloth. The finest names that adorn the literary annals of the fourteenth and fifteenth centuries, the most prolific authors who flourished during that long period, were mendicant friars (*i. e.* Franciscans or Dominicans). We accordingly remember Duns Scotus, St. Thomas Aquinas, Roger Bacon, the founder of experimental philosophy, and Robert Grossteste, the most enlightened ecclesiastic of the age. We may not admire the scholastic philosophy of the followers of Francis and Dominic, but it is little understood, and condemned too often without reason or proof, for those who denounce seldom care to read them. I find no religious orders ever before carried the spirit of inquiry to such an extent."

"The destruction of the monasteries," says Digby, "was the great work accomplished at the Reformation."\* And the Reformation created a disposition, at such irreconcilable hostility with the evangelic counsels, that, as a necessary consequence, all who sought to follow them, under whatever habit, incurred abhorrence. Those, it is true, who lived nearer to the time of the monks, were not so inveterate. It has been remarked, that the greatest and most popular dramatists of the Elizabethan age held the religious orders in much reverence. The members whom they introduce are almost always holy and venerable men; and as no one would bring unpopular opinions prominently forward in a play intended for representation, we may be sure that the public regarded them in the same light. In these plays we find nothing that resembles the coarse ridicule with which the monks were assailed, two generations later, by dramatists who wished to please the multitude."†

"But as Protestantism was to be progressive, these opinions became obsolete, even among the same classes; and at length the mere sight of a monk was sufficient to inflame its votaries with rage and scorn.‡ "The bare sight of one of them" (says a modern author) "really embitters the existence of an Englishman. If he catches sight of a monk at Cadiz or Lisbon, he cannot think of anything else. It is in vain that the good religious men offer and give hospitality; that they have libraries at the disposal of all strangers;

\* "There were, in the reign of Henry VIII.," says Camden, "monuments of the piety of our forefathers, built to the honour of God, the propagation of the Christian faith and good learning, and the support of the poor. About the thirty-sixth year of that king, a torrent, as it were, broke in upon the ecclesiastical state of England, and, to the great surprise of the whole world, *and oppression of the nation*, at once threw down the greatest part of the religious, with their curious structures, most of which, in a short time, were everywhere pulled down, their revenues squandered, and the riches which had been consecrated to God by the pious munificence of the English, from the time they received Christianity, were in a moment dispersed and profaned. There never were more certain indications of, and glorious monuments of Christian piety than these." And Weever says: "There were not extant any other seed-plots besides these from whence Christian religion and good literature were propagated over this our island."

† Sir W. Temple condescends to reckon the primitive monks and modern friars on the list of the great and wise and good. So with Cowley. And every one remembers Sterne's portrait of the Franciscan friar.

‡ This has of late been painfully exemplified.

that their churches and convents are full of paintings, statues, and objects of admirable art, which all persons may enjoy as if their own property; in vain that they present everything gratuitously, and with the utmost courtesy and benignity. Nothing can cure the madness of the English; and under their ignoble hands, these institutions perish, and, I fear, for ever.”\*

This being the state of public feeling in England, where the religious orders have of late years been revived, one Giacinto Achilli came to England, and represented that he had been a Dominican friar, and a priest; and that both the priesthood and the religious orders were in a very shocking state. Of course, in such a state of public feeling, he received a cordial greeting from all those who hated the Catholic Church and her religious orders; and who, carried away by their prejudices, never stopped to inquire whether the truth were that those orders were so bad that he had to leave them, or so good that they could not let him remain. His account of the order, after having been in it twenty years, during portions of which time he alleges he was in some position or other of authority, as lecturer, professor, visitor, or prior, is as follows:—

“Who are generally the most wicked persons in Italy? Priests and monks. How great are the horrors of the cloisters! where ignorance and superstition, laziness, indolence, calumny, quarrels, immorality of every description, not only live, but reign. The most abominable vices, long banished from all society, have taken refuge there.”†

Now, these things were written in 1846, five years after having been perpetually excluded from the priesthood, and after having relinquished not only the religious orders, but the Catholic religion; and these were his first public intimations of the existence of this immorality and these vices in those orders, in one of which he had lived (and, necessarily, he could not know much of any other) for so many years. During many years he was in the Dominican order,

\* *Du Mécanisme de la Société en France et en Angleterre.*

† It should serve to show what value is to be attached to such sweeping charges—that when Achilli, on his oath, was challenged to sustain these statements, he said the monks of Viterbo (the only ones he could have known much about) were good; and generally, that he supposed monks were some good and some bad; which, in a certain sense, may be true, as it must be of all men; only to make it the *whole* truth, it should be added that the “some” who are good are infinitely more numerous than the “some” who are bad. And moreover, in the whole course of his career, including this trial, no specific charges have been brought by him against particular monks or ecclesiastics; while any one will see who peruses the report of the trial, that this is more than can be said of himself or any of his co-seceders from the Catholic Church. Let the reader refer to the history of the Malta college, with the case of Achilli, Sacarres, and Leonini; or to the evidence of his fellow Dominican, who declined to answer any questions touching his own past life, or the other poor apostate, the private secretary of Father Gavazzi! Surely this trial shows that it is only those who leave the Church, or are expelled from it, against whom, if any—such charges can be brought!

for some time in positions of authority, and yet no proceeding had he taken as to these things; though all history shows that if disclosed they would be reformed. He reserves his disclosure until he has left the convent,—left the Catholic Church—left the country—and embraced a religion which execrates these orders; and then, he reserves them until they can be of no use for any purpose of their reformation, and can only avail to augment the abomination in which they are held by the people of this country—his patrons and supporters! Is it not an amazing instance of the blindness of prejudice, ignorance, and enmity, that all this should have been credited, without any idea of its being self-contradictory and self-condemnatory!\*

It is painful to find that so many should wish to believe everything abominable of those religious orders which formed for ages its noblest ornaments; never hesitate a moment to give credit to the vilest charges against the inmates of convents; should positively receive with delight tales of foul crimes, and cherish in their hearts the stories of iniquity which any apostate may bring them; it never crossing their minds for a moment to ask whether it were not more Christian to suspect one person of calumny than hundreds of foulest iniquities; never pausing to ask for proof, because not caring for it—not desiring to be unconvinced, because fearing to be disappointed!

So it was, however; not, doubtless, with the candid, the charitable, the liberal, and the enlightened; but they are unhappily in the minority; the rest believed. Was this to be acquiesced in by those who knew these things to be atrocities of calumny? They all rested on the character and credit of Achilli; inquiries were made; evidence obtained, and in July, 1850, the *Dublin Review* appeared with an article, elaborate, and apparently authoritative, accusing Achilli of the very vices he thus imputed to his order! an article republished and widely circulated; yet no proceedings were instituted, by or on the part of Achilli, to vindicate his character. These charges remained unanswered for the whole of the remainder of that year, and for nearly the whole of the next, until in October last, Achilli continuing his denunciations of the priesthood and the

\* Especially as there are works extant such as the books of Digby, Faber, Capes, and Allies, written by men who have actually been converted to Catholicism, in a great degree through the impression made upon them by the piety and sanctity of the religious houses abroad; and any Protestants could easily satisfy themselves as to the piety and sanctity of those at home. Is it uncharitable to say that those who do not so satisfy themselves do not desire to be satisfied? Nay, is not one forced to think unfavourably of such as thus show themselves obstinately bent upon believing badly of thousands of their fellow Christians? Were any one now partaking of these unhappy prejudices to permit themselves to become really acquainted with the religious of the order of the Good Shepherd (for instance), or the Nuns of Norwood, or the Dominican monks of Woodchester, or the Benedictines of Loughborough, they would soon blush for their bigotry.

religious orders, and going about the country declaiming against them, and doing his utmost to excite prejudice against them,—Dr. Newman, himself a priest, and of a religious order, very naturally assumed them to be true; and believing them so, repeated them in substance, in a lecture he was delivering in vindication of the Catholic Church, and her priesthood, and of religious orders. Then ensued the present prosecution. Now, here some considerations naturally occur, as to the moral or legal right of the putting forth these charges under the circumstances, and the moral and legal responsibility involved. First, as to the obligations of the Catholic religion; and next, as to the requisitions of our own law.

Now there can be no question, whether we refer to ancient or modern authorities, that the Catholic religion, assuming the charges not to be disproved by Achilli, justified Dr. Newman, indeed, made it his duty to publish them, believing them to be true.

The Saxon laws ecclesiastical thus speak of the duty of priests:—

“It is the duty of priests, in their shrift-districts, wisely and prudently to lead and teach their spiritual flocks; and they may not flinch for fear nor love of man from preaching righteousness, and forbidding unrighteousness. Weak is the shepherd at the need of fold who will not with his cry protect the flock that he has to keep, if there be any public robber before to rob. He may not flinch if he will secure himself, neither for love nor fear, from saying to men what is most right. Woe to them who undertake a spiritual flock, and can neither take care of themselves nor of the flock they should keep. Such are those who will not, or dare not, warn the people against sins, and correct sins.

“It is also most needful to mass-priests that they make known to their parishioners that every one strictly preserve himself from false witness, because it is a very heavy crime. Whatever man shall commit, or has committed that crime, shall purify himself with the same penance as concerning homicide or other capital crimes: he shall live seven years in very narrow misery, on penance, or be cast out from all Christian men.”

And similar conclusions are confirmed by the Saxon canons about defamation,\* and by the greatest Catholic theologians.†

\* The Saxon ecclesiastical law thus states the rule as to defamation:—“Falsos testes a communione ecclesiastica summovent, nisi pœnitentiæ satisfactione crimina admissa deleverint. Si quis propter odium falsum testimonium super alterum dixerit vii. annos pœniteat, iii. in pane et aqua; quia Scriptum est, “Qui falsum testimonium profert contra proximum suum extinguitur lucerna ejus in die ultimo.” Si quis mendacium dixerit per ignorantiam et non nocent, confiteatur ei cui mentitus est, et sacerdotis judicio hora tacendi dampnetur vel xii. psalmos cantet. Illi vero qui semper mentiendi (causâ) huc illucque discurrant et per hoc multa dampnabilia adquirant, sed ad pœnitentiam convertunt primitus omne mendacium exsecrare debent, sicut Scriptum est, “Perdes omnes qui locuntur mendacium.”

† Dr. Kenrick, present archbishop of Baltimore, in his *Theologia Moralis*, cap. ii., De Famae et Honoris læsione, says, “Publicam ob utilitatem licet revelare occulta alicujus delicta, qui fama abutitur ad alios decipiendos;” and strengthening his assertion with the opinion of St. Thomas, 2, 2, quæstio 73, art. 2nd, ad primum, which is, “Revelare peccatum occultum alicujus, propter ejus emendationem, vel propter bonum justitiæ publicæ accusando, non est detrudere.”

According to these principles of Catholic moral theology, it is clear that, if Dr. Newman did not believe the charges he published against Achilli to be true, he would be guilty of as great a sin as any of those of which he accused Achilli; and that, under peril of such sin, he would be bound, whenever his belief was altered, to make reparation to Achilli by publicly retracting those charges. And if he believed the charges true, he could of course state, and would be called upon to state, the grounds of his belief: but no greater onus of proof would be imposed upon one than upon the other; the question being not whether the charges against Achilli were proveable, but whether they were true; for they might be true, and yet not provable; and as the Church would proceed *in foro conscientia*, the accused could never be allowed to waive the question of his guilt until his adversary had proved it. The primary question would not be whether the charges could be proved, but whether they were true. And not only might they be true, though not provable, but they might even be not true, and yet justifiable: that is, the circumstantial evidence, or the reasons for belief, might be so strong as to justify any person morally in acting upon the belief, for his own protection, and the protection of others. Therefore the Church would call upon Achilli to disprove the charges against him, as well as upon Dr. Newman to prove them. Both parties, in fact, and not merely one of them, would be called to produce all the proof in their power. And even if the charges against Achilli were not proved, it would not amount to disproof, or be equivalent to his acquittal, because it would not show them untrue, or even always unproveable, but only unproveable at that time. And even if they were disproved, that would not prove them groundless, so as to be equivalent to the conviction of Dr. Newman of any offence at all, still less a grievous offence; and it might yet be that he was wholly without blame, having not only belief, but reasonable belief. And in that case the Church would not only deem him justified in warning the faithful of the man he believed thus guilty of grievous sins, but culpable in neglecting so to do; at all events after they had been previously brought before the man, and apparently admitted by being allowed to pass uncontradicted. A contrary principle appears equally revolting to religion, to reason, and to common sense; for the practical result would be this. If a clergyman not only believed such grievous sins of a man, but knew that they have been brought against him in his presence (publication is the same thing in effect) and not denied, and also knew that this man was

Upon which the archbishop says, "Sic apostata qui veritatis studio sua prætexit vitia, meretur, ut hæc palam prædicentur."

Concina, in his *Theologia Moralis*, quoted by Scavina, whose theology is the theology of St. Alphonsus, condensed, says, "Licet revelare verum et occultum alterius crimen ut publicum damnum, evitetur quo in casu quisque per se loquendo crimen manifestare tenetur; nam bonum communitatis vincit bonum particularis, ac quælibet pars tenetur ad bonum totius conferre."

doing much mischief in society, and had admission into domestic circles where he might repeat these shocking offences; yet the clergyman would have to hold his peace, and allow any amount of mischief to be perpetrated, unless he happened to be able to prove the charges he believed: nay more, unless he were persuaded that he would *always* be able to prove them; which of course he could *not* be.

Nor is this all. Such would have been the rule of the Church, assuming Achilli to have been originally only the accused; but it was otherwise: as already has been shown, he was originally the accuser; he was the aggressor; he went about denouncing the priesthood and religious orders as abandoned to immorality and the most abominable vices. By the law of the Church, he would have had to prove these horrible accusations ere he could accuse another for retorting them. He would have had to justify himself for spreading such shocking and scandalous charges. Nay more; it would have been impossible that he should do so, for he would have been deemed to stand convicted of having failed in his duty in not suppressing these iniquities, or exposing them, while he was in the convents in which he acquired his knowledge of their existence—assuming him to have ever done so. He would have had to show, first, how it was he did not do this: until he showed this satisfactorily he could have had no *locus standi* to accuse others of crimes he convicted himself of having connived at; and as connivance is as bad as commission, he could not have accused another of malicious slander, for accusing him of what he thus would have been deemed to have admitted.

Did the law of England ever proceed upon a contrary principle, or does it now? This is the next question.

Originally, there was no law apart from the law of the Church. The human law was not merely co-extensive with the Divine, but identical with it. Bishops sat with earls in those assemblies of our Saxon ancestors where the laws were either agreed upon or administered; and it was not only that the secular law was in conformity with the moral theology taught by the Church, but it was, in fact, a transcript of it, differing only in substituting secular penalties for such as were purely spiritual, and enforcing the sentences of the Church with the arm of the civil power. This may be seen amply exemplified in the Saxon laws, recognised by Coke as the sources of our common law. Hence the direct way (strange as it may sound to Protestants) of testing the law as now laid down, and seeing how far it divaricates from the original common law of this country, is to see how it squares with moral theology as now taught in the Catholic Church; for, by common consent, that has not changed, as may be seen by comparing any modern Catholic catechism with those Saxon laws. And it will be found that the more a law has divaricated from that sacred standard, the more it has departed from right reason, common sense, and sound policy.

Hence anciently the courts were partly of a spiritual character ; and even secular penalties were only added to the spiritual, the offence being adjudged according to the moral theology of the Church,—a fact, traces of which may be seen in the theological expressions “mortal” and “venial,” to be found in our old law-books.\* After the Conquest the secular courts encroached constantly on the courts spiritual, and more and more devaricated from the law of the Church. The secular courts were separated from the spiritual, and by degrees deprived the latter of any share in the adjudication of cases in which the secular courts imposed any penalty ; thus substituting their jurisdiction, instead of bringing it in aid of the spiritual. Hence, in the reign of Edward I., we find a statute recognising that defamation shall be tried in the spiritual court, when money is not demanded, but a thing to be done for punishment of sin.† And in the reign of Edward II. is another Act,‡ recognising that, in defamations, prelates shall correct ; enjoining penance corporal.§

While offences were cognizable by the courts spiritual, they were sure to be dealt with according to common sense and conscience ; and, be it observed, that long after the courts secular had usurped the jurisdiction of the courts spiritual, the latter retained it in cases where priests were concerned, and would, at common law, have had cognizance of the case before us, where both parties are priests. In the courts spiritual (not at all like the present “ecclesiastical courts” of the Established Church, those objects of universal abomination), the rules of moral theology would be followed, which make a slander mortal if wilful, venial if not wilful ; and in either case would call on both parties to give all the evidence in their power (in addition to their own statements), and would not cast the whole onus of proof upon one party, probably the least able to support it ; because (as Coke says) “the nature of crime is secret.”

It is to be observed, that as printing was not discovered until the era of the Reformation, in order to arrive at that which would have been the law in the time of Edward the Confessor or Edward III., in the case of a libel, properly so called,—i. e., *written* slander, printed or published,—it is really requisite to resort to the moral theology of the Catholic Church, which certainly in the former of these periods would have been implicitly, and even in the latter would have been respectfully consulted, by the secular courts. It is self-evident that this must have been, and must ever be so in Catholic countries ; for the judges can scarcely give judgments at variance with that religion which they recognise as obligatory on

\* See *Mirror of Justice*, v. sec. 12.

† 13 Edw. I. stat. 4.

‡ 9 Edw. II. c. 4.

§ A bill has recently been rejected for removing the last remains of this system, a relic of which is sometimes seen in our churches in the shape of a white sheet.

their consciences, especially when also recognised by the state. At least, this must have been so, except in cases where corruption or coercion induced them to give decisions contrary to their conscience and the law; and therefore the common law originally would have been similar to, and in the present instance the law of the Church: Achilli would have been as much called upon to disprove the charges published against him, as Dr. Newman would have been to prove them.

Nor would what was or would have been the law of libel in ancient times be necessarily changed in principle by the change of religion, though it would, of course, in its application. Many curious cases after the Reformation illustrate the alterations that ensued as to what was deemed a libel,—*i.e.*, as reflecting on a man's character. Thus it was held by Lord Holt, in the reign of Queen Anne, to be a libel to accuse a man of wishing to bring in popery; and he cited a case in which it had been held, that even to call a man a papist was libellous; for "the very being a papist shows what his principles and affections are, and is good reason to remove him out of every office of trust."\* But nevertheless, except so far as necessarily affected by the change of religion, the principles of the law of libel would remain the same; and it is with reference rather to that which would privilege a libel from prosecution that the question has to be considered in the present case, in which no one doubts there was a libel. For the invention of printing, after all, perhaps, affects the question, at all events in Catholic theology, and, as it is conceived, so ought reason and sound sense, not in principle, but degree; as printing a defamatory statement is simply speaking it to a greater number of persons than is ordinarily possible by word of mouth; for how could it matter whether a libel be spoken (as it may be) to 5,000 persons at a public meeting, or written to them in a printed publication?†

Practically, too, evidence at the trial is often rendered unavailable by reason of the rigid strictness of our rules of evidence. Now, it is to be remarked, that in the case of an application for a criminal information, as it is an extraordinary procedure on the part of the court, the old principle of law has in a great degree continued to be acted upon—at all events, until very lately. The prosecutor has always had, by his own affidavit, in the first place, to deny distinctly the truth of all the charges he complains of; and it is believed that he was expected to go as far as it was possible towards disproving them. The defendant's showing the truth of the charges would induce the court to refuse the motion.‡ But then, on the other

\* *How v. Prin*, 7 Modern Reports; Holt, C.J., 11 Modern Reports, 99.

† Thus Twysden, J., in a case temp. Charles II., says of a printed publication, "It is no more than if the defendant had employed several clerks to write as many copies as he has now printed." (*Lake v. King*, Saunders' Reports, 133.)

‡ *Per Pratt, J., King v. Beckerton*, Strange, 498. Hobart, C.J., Hobart's Reports, 253.



hand, exactly in proportion to the conscientiousness of the party prosecuted will be his scrupulousness as to swearing positively to the truth of what he only believes, however firmly and however reasonably, because upon credible testimony; for few conscientious persons would swear to any fact they did not personally know, although a contrary practice is notoriously prevalent in courts of justice, and the every-day proceedings of life. So that, even upon a criminal information, a party may be utterly defenceless who has most laudably, to warn others, made serious imputations upon another, perfectly true—and which he may believe to be true, and may even be able, morally, and at one time have been able, legally, to prove, and thus practically there may be no protection for the public against the greatest impostor or the most atrocious scoundrel.

Thus, in this case first put, why should the party publishing the libel under such circumstances be called upon to prove the libel true, any more than the party libelled should be called upon at least to give as much evidence as he can of its being false? at all events, where the former proves that he is not in a position in which it is possible to give legal proof of its truth; and the other, it is obvious, must be able, if it be false, of giving some evidence of its falsehood. Originally, it is conceived, this was so, even in trials; and though afterwards on actions for libel the party suing could not be examined as to the truth of the libel, by a recent Act he may be called for in actions, and in cases of criminal informations he may offer himself for examination. But then this is not very material in the worst cases of all,—those in which the libel is a very bad one, *i. e.*, charges of the blackest crimes; and is also true, though not legally proveable, for in those very cases, the party libelled being a person without conscience or scruple, will assuredly either not appear, or if he do appear, will deny it; and as it requires two witnesses to convict of perjury, he may do so with impunity exactly in the cases of greatest and grossest iniquity, where of necessity there will ordinarily be no witness to the actual commission of the crime.

In such cases there seems only one chance of refuge for the party prosecuted, *viz.*, his being able to show from the other's own conduct that he was conscious of the crimes imputed to him; as, for example, that he had ever been charged with them in his presence, without his contradicting them; and that they had ever been published to his knowledge without his publicly meeting them. This of course would be necessarily an uncertain and rare resource, though still it is easily conceivable that it might occur; where a man at one time durst not contradict the charges because dreading that they would be legally proveable, and at a subsequent time was either dragged forward by others to vindicate his character, or ventured upon it himself, in the hope that the charges were legally proveable no longer.

So strongly does the law of England even now feel this, that on

an application for a criminal information it is of itself a sufficient answer (and even on indictments, or in an action, strong matter of suspicion), that the party complaining has not come forward promptly,\* or has allowed the libel to pass on some previous occasion without publicly meeting it.† And this, perhaps, is the principle on which it is laid down as a general rule, that an action is not maintainable against a person who repeats defamatory matter put forth by another; though this rule also is fettered by such technical restrictions as to be practically valueless at a trial.

The whole law and practice of the Court of Queen's Bench as to criminal information has ever been in conformity with this principle, for it has proceeded upon this rule, that this extraordinary intervention shall not be invoked by any one who has not come promptly to the court upon the first publication of the charges complained of; and if he disclose that there has been some former publication thereof, upon him is cast the onus of accounting for his not having come earlier. And even in an action a long delay would be fatal.

Yet, as will be seen from the subsequent statement of the case, the Court granted the rule, and ordered the information, upon an affidavit of the prosecutor disclosing that there had been a previous publication of some of these charges; and not disclosing that he had accounted for his not having resorted to any public court of justice for vindication of his character!

Unfortunately an Act was passed a few years ago by Lord Campbell, which, like so many other Acts of Parliament for amendment of the law, was no real improvement, and which enacted that the defendant on a criminal information might plead the truth of his charges, and prove them, *if he could*. Of course, in cases where he *could prove* them, this might not much matter, but in cases where, however *true*, they were not *proveable*, to put *him* to the proof was really to leave him at the mercy of the prosecutor. And unhappily the effect of the Act has been—certainly seems to have been in this case—to induce the Court to be too easily satisfied with the prosecutor's affidavit of denial, and too easily induced to grant the information, hoping that no hardship will ensue, on account of the defendant being enabled to plead the truth at the trial. The fallacy is, it is conceived, palpable, of confounding *permission* to prove with *power* to prove, or proveability with *truth*. And yet, on reference to the argument upon the rule, it will be seen the Court relied on this delusive resource of the defendant, as a reason for refusing him time even to answer the affidavit of the prosecutor!

The reader is requested to consider the affidavit on which the Court granted the information; an affidavit disclosing that one of the heaviest charges contained in the alleged libel had been made

\* *Regina v. Murray*, Jurist, 37, where there had been a delay of a few months only.

† *Maitland v. Goldney*, 2 East, 425.

in some manner in the course of some proceeding in a court of justice, and not disclosing that the prosecutor and deponent ever publicly denied the charge, or publicly challenged inquiry into it; an affidavit, also, disclosing that so long as a whole year before it had been published in a London newspaper, that he had been dismissed by the committee of a Protestant college, after they had heard unpleasant statements as to his past life, and not disclosing that he ever took any public notice of this publication, either as to the charges thus made or the reasons of his dismissal. The records of the Court of Queen's Bench furnish, it is believed, no instance of a criminal information granted on such an affidavit!\*

Now though the law always held the truth of a libel a justification in an action, and by Lord Campbell's Act it is so now in a prosecution or criminal information (although, even before that Act, truth was an answer to an application for a criminal information, which of itself would seem to show that at common law it must once have been an answer on the trial of the information, the peculiar object of which is vindication of character; and it seems absurd to say that while an information will not be issued if the libel appears upon the affidavits to be true, the defendant is to be convicted, though it be proved by witnesses at the trial to be true), yet the defendant has to plead and prove a justification; and if he be not able to prove it, however true it may be, he has no defence, unless he can make it out in law a privileged publication.

Now it is of the utmost importance to distinguish between cases in which the publication of a libel is privileged, and where it is justifiable. In the former class of cases, the party publishing it has not to prove its truth; in the latter, he has.

It cannot be, that the law of England only holds such publications privileged as are essential for common mercantile transactions, or the ordinary commerce of life, and protects no other; and in all other cases calls upon the party publishing the libel, however laudable may have been his object,—however valuable the warning it may convey,—however convinced he may be of the truth of it,—however incapable of proving it,—calls upon him at the trial to prove it: and not only so, but to prove it, not merely by moral but by legal evidence; or, if he fail, brands him as a libeller, and inflicts imprisonment or fine! If in many cases it cannot be otherwise at the trial,—that is, according to the law as it stands,—then this very fact shows surely that such injustice is to be avoided, and that such cases should not be sent to stand the test of trial, whenever it is possible fairly to consider them privileged. Practically, therefore, the question comes to one of privileged publication; and on this the law will probably be warped by the religion of the country and the opinion of the age.

One of the most curious cases on the subject (perhaps the earliest)

\* And still less of its being accompanied by such observations as those of the Lord Chief Justice on the occasion,—the use of the epithet “ribaldry;” and an insinuation of possibility of a conspiracy to suborn perjury!

is that which Coke cited,\* in the reign of James I., as having occurred in the reign of Elizabeth, where a parson, in a sermon, recited a story out of Foxe's *Martyrologie*, that one Greenwood, being a great persecutor, had great plagues inflicted upon him, and fell by the hand of God; whereas, in truth, he never was so plagued, and was himself present at the sermon; and thereupon brought his action. And the Court said, that, being delivered but as a story, and not with any malice or intention to injure any, he was not guilty. This principle, here acted upon, is, it is conceived, one of common sense, and was acted on in the reign of Charles II.,† when a petition to parliament had been printed and circulated, charging the plaintiff with "many horrible and great abuses," and Sir Matthew Hale held the publication was not actionable. So, in 1793, Lord Kenyon recognised the principle, though denying its application, declaring that, in order to constitute a libel, there must be a malicious intention to defame.‡ And, in 1813, Lord Ellenborough, in a case reported by the present chief justice of the Queen's Bench, who tried the case of Dr. Newman, held a publication privileged which charged the plaintiff with publishing works of an improper and immoral tendency. "The main question," (he said) "is *quo animo* the defendant published the article, whether he meant to put down a nuisance to public morals, or to prejudice the plaintiff. To ascertain this, it is material to know the general nature of the defendant's publication; the plaintiff is bound to prove the defendant actuated by malice, and the defendant discharges himself by showing the contrary. Liberty of criticism must be allowed, or we should neither have purity of taste nor of morals. Free discussion is essentially necessary to the truth of history, and the advancement of science. That publication, therefore, I shall never consider as a libel, which has for its object, not to injure the reputation of an individual, but to correct misrepresentations of fact; to refute sophistical reasoning; to expose a vicious taste, or to censure what is hostile to morality."§

Again, a case occurred in 1827, in which a dissenting preacher had been charged with forgery by a member of his "denomination," who failed to prove the charge, whereupon the question arose if the publication were privileged. The judge left it to the jury, whether the letter were a communication made *bonâ fide* in answer to the inquiries instituted touching plaintiff's conduct. They found the contrary, which was clearly the case, for the publication complained of was a considerable time after the matter had been investigated and disproved, so the Court decided against the defendant; but they plainly affirmed the principle, that if there be a question of public interest respecting the character of a minister of religion, a pub-

\* *Locke v. King*, Saunders' Reports.

† *Brook v. Montague*, Cooke's Reports, temp. James I., 90.

‡ *Rex v. Abingdon*, 1 Espinasse's Reports.

§ *Tabart v. Tapper*, 1 Campbell's Reports, 350.

lication is privileged, if not malicious, which is only designed *bona fide* for the benefit of the public; a doctrine naturally deducible from the principle laid down by Lord Ellenborough in the case before cited.\*

It must not be omitted to observe that, in law, no proceeding is supportable for a libel unless it be legally malicious; and though ordinarily the law implies malice from the publication of what is calculated to prejudice another, and does not require proof of malice, yet where it appears that there was not malice, it is otherwise; and the definition of a "privileged communication" is a publication made on such an occasion as rebuts the *primá facie* inference of malice arising from the publication of matter prejudicial to the character of the plaintiff, and throws upon him the onus of proving actual malice,† *i. e.*, that the defendant was actuated by motives of personal spite or ill-will.‡ And Lord Campbell, in a case last year, said: "The rule is, that if the occasion is such as will repel the presumption of malice, it is a privileged communication, and it lies on the party complaining to prove that malice existed. It would be very hard if, where a person has done no more than discharge his duty to himself and society, he should thereby be rendered liable to an action." He again recognised the principle, saying, "The question is, whether the occasion of the publication rebuts the inference of malice arising from the matter of it." Again, in 1823, Mr. Justice Bayly recognised the same principle, citing those very words; and Lord Tenterden said: "The malicious intent may be inferred from the publication of the slander itself, in a case where no evidence is given to rebut the inference." In 1839, the present Lord Campbell cited the old case first above referred to, as quoted by Coke; and also maintained that publications, for the good of the community, have been held privileged in many instances. And this was remarkably illustrated in 1840, in a case in which Mr. Stowell was sued for libelling a Catholic priest.§ The libel was as strong as could well be conceived, for it charged that the priests "grind the people down and debase them as low as the beasts that perish;" and although, at the trial, a verdict had been found against him under Baron Rolfe, who said, "the occasion" (an anti-Maynooth meeting) "did not negative malice," the verdict was set aside. Lord Denman recognised the principle that there might be an occasion of a public discussion on a religious subject, on which the speaking of libellous matter would be privileged, and he only denied the application of the doctrine to that case. He said, "We consider

\* *Blackburne v. Blackburne*, 4 Bingham's Reports, 408.

† *Per Parke, B.*, *Wright v. Woodgate*, 2 Crompton, Meeson, and Roscoe's Reports.

‡ *Taylor v. Hawkens*, 20 Law Journal Reports, Q. B. 313.

§ *Rex v. Creecy*, 1 Maule and Selwyn's Reports. *Rex v. Harvey*, 2 Barnwell and Cresswell's Reports. *Hearne v. Stowell*, 12 Adolphus and Ellis's Reports.

the old case (cited by Coke) is not law;\* all the other cases are perfectly consistent with the doctrine, that the privilege which protects a communication must result from a right to discuss the particular matter, in respect of which the alleged libel is published." In that case, there clearly was no such right, for the libel related to the priest's conduct in imposition of penance, which had no natural or necessary connection with the Maynooth endowment.

Assuming, then, that Father Newman did not prove any part of his charges (which is a question whereon the reader will exercise his own judgment), then the question of law would arise, whether the occasion of publication was privileged; which would depend on another question, whether it rebutted the ordinary inference of malice? This question, on which probably few impartial persons will have much doubt, depends upon whether the publication were "to put down a public nuisance or to prejudice the plaintiff," which will be best decided by a reference to the antecedents of the occasion and the "general nature of the publication;" whether, in the words of the judges, in the cases cited, the circumstances showed that (in the language of Lord Ellenborough) the object was not "to injure the reputation of an individual," but to "correct misrepresentations of fact;" or to "censure what is hostile to morality;" or, in the language of Lord Denman, that there was "a right to discuss publicly the particular matter in respect of which the alleged libel is published."

It will be for the unprejudiced reader to decide whether there could have been any intention "to injure the reputation" of a man by repeating charges already published by others, and remaining undisputed; whether it is or is not more probable that the object was to "put down a public nuisance" than to "prejudice the plaintiff?" whether, when the party libelled had publicly made charges against the priesthood and religious orders in general—to both which states of life the plaintiff and defendant belonged—there was or was not a reasonable occasion to "correct misrepresentations of fact?" and whether statements tending to disprove those charges—by destroying the credit of the person who made them (a common course in courts of justice for such a purpose),—did or did not come within the strictest rule laid down, that there must be "a right to discuss the particular matter" to which the libel related?

Presuming that these questions are determined by the reader in favour of Father Newman, then it will follow that the publication was privileged, by reason of the occasion; and that it was not necessary to justify it, and to plead and prove a justification; but that all he had to do was to show so much of the circumstances and causes of publication—and the antecedents of the case—as in law constituted the ground of privilege, viz., the raising of a public controversy, on the part of Achilli himself, as to the character of religious orders in general, and especially of the one to which he had

\* *Sed quare de hoc*; see it cited 1 B. & A. and 4 B. & C.

belonged; and a controversy necessarily implicating his own conduct in that order, to which the libel related. That being shown—as it is conceived it clearly was—then it was for Achilli to disprove the charges, rather than Dr. Newman to prove them.

The question would appear really to have been unconsciously decided by Lord Campbell in favour of Dr. Newman; for he laid it down at the trial that the publication was clearly (assuming it to be true) for the public advantage; seeing that Achilli had raised a controversy on the subject of the character of the Catholic clergy and religious orders, in which it was manifest the public had an interest. It will not avail to answer to this that it only implied that the truth was a condition of its being for the public benefit; because, on that supposition, the terms of Lord Campbell's Act are unmeaning, which require that, in addition to the libel being true, it should be pleaded and proved that its publication was for the public benefit; which certainly shows that the latter is a distinct, and not a dependent stipulation; and though the Act requires both these things, that is only on the plea of justification, which is quite consistent with its having been done maliciously; whereas, on the plea of "not guilty," the question arises, at common law, whether the libel be privileged; in which case a plea justifying it on the ground of truth would not be required, unless malice were expressly proved.

It is rather remarkable that on the very day on which the trial concluded, a case was reported—tried before that upright and honourable judge, the Lord Chief Baron, in which the law was laid down, not only in conformity with the principles above maintained, but with the most ancient authorities alluded to, on the subject; and in a case, too, not dissimilar in character to the present. There, a clergyman had sent round the parish a circular, cautioning the people not to send their children to the plaintiff's school; and applying to him certain severe expressions in Scripture, such as "schismatics," and "evil deeds," &c. The Lord Chief Baron held that the occasion on which the letter was published, in the absence of proof of express malice, made it a privileged communication; and that, therefore, its truth need not be proved.\* The analogy between that case and the present is obvious; and it is not, as any lawyer will see, at all affected by the fact, that the charges in the present instance are far more serious, which makes no difference in point of principle; and, indeed, supposing them true, but not proveable, would only make it more important to support the privilege, while, on the other hand, would make it more easy, if not true, for the prosecutor to prove that malice which could destroy the privilege.†

\* *Gilpin v. Fowler* (clerk), Court of Exchequer: sittings at Nisi Prius, (June 21), before the Lord Chief Baron and a special jury.

† The evil likely to arise from protecting information *bonâ fide* given to prevent damage from misconduct, appears much less than that from putting a stop to such information, by rendering the giver of it liable, unless he has legal

The question, however, is one of law,\* which it is for the Court to decide, and which was not raised at the trial. Before passing to the trial, however, there is a class of cases on the subject of privileged libels, which it is proper to advert to, in connection with a somewhat painful feature in the proceedings—the conduct of the Attorney General and of the judge. The decisions alluded to are those which concern what is called privilege of counsel. Among the cases in which the law holds a libel, though false, yet not actionable, if not proved to have been malicious—is that of counsel at the bar. In the very case already cited in the time of James I.† it was said, “A counsellor hath a privilege to enforce anything which is informed unto him by his client, and to give it in evidence, being pertinent to the matter in question;” and in another case it was laid down that “if a counsel speak scandalous words against one in defending his client’s cause, an action lies not against him for so doing; for it is his duty to speak for his client; and it shall be intended (understood) to be spoken according to his client’s instructions.”‡ The old reports are brief, and often obscure; and it must be presumed that it was “intended,” from the fact of its being in the “instructions,” that the counsel believed it true; and then the doctrine is consistent with the general principles above elucidated. And this is, indeed, the reason deducible from subsequent decisions. In 1818, a case was determined in which an action was brought against Sir James Scarlett for saying in a speech at the bar, that the plaintiff was a “fraudulent and wicked attorney.”§ The Court said the words were privileged, because pertinent and relevant to the case, and not used at random, but were a fair comment on the circumstances of the case; and that the action could not be maintained, unless it could be shown that the counsel availed himself of his situation maliciously to utter words wholly unjustifiable. In another case, Mr. Justice Bayley said, “The speech of a counsel is privileged by the occasion on which it is spoken; he is at liberty to make strong, even calumnious observations against the party, the witnesses, and the attorney in the cause. The law presumes that he acts in discharge of his duty;” and Mr. Justice Holroyd adds: “If in the course of a cause he utter observations injurious to individuals, and (query, *or*) not relevant, he could be sued in an action showing that the matter was spoken maliciously, and without reasonable and probable cause.” Lord Ellenborough laid down the law thus:—“The law privileges many communications which otherwise might be considered calumnious. In the case of master and servant, the convenience of mankind requires that what is said in fair communication between

proof of the truth. Per Erle, J., *Coxhead v. Richards*, Common Pleas, Trinity Term, 1846.

\* *Brook v. Montague*, Croke’s Reports, temp. James I. 90.

† *Wood v. Grenston*, Styles’s Reports.

‡ Per Cresswell, J., *Coxhead v. Richards*.

§ *Hodgson v. Scarlett*, 1 Barnwell and Alderson’s Reports, 242.



man and man on the subject of character should be privileged, if made *bonâ fide* and without malice. So a counsel intrusted with the interests of others, and speaking from their information, for the sake of public convenience, is privileged in commenting fairly upon the circumstances of the case, and in making observations on the parties concerned, and their instruments or agents in bringing the cause into court." And Mr. Justice Bayley says, "If the epithets were not warranted, the *judge in his summing up at the trial may set the matter right.*" In another case,\* Mr. Justice Holroyd said, "The observations *may be commented on by the judge.*"

Now these authorities are cited for several purposes: first, in support of the general principle of law, as to libels privileged by the occasion; next, to raise an argument by way of analogy for its application to the present case; for if what may be said by a master as to the character of a cook is privileged by reason of public convenience, is not what a clergyman may say of another, who claims to be a clergyman, *à multo fortiori* privileged? Is not the case of a cook of infinitely less importance than that of one who has the care of souls? And let it be recollected that the character of Achilli was relevant and of public interest, not merely as respects the Roman Catholic Church, but the Church of England; for, if he had been duly and justly degraded from the priesthood for immorality, then the question arises whether he be admissible into the Church of England, which, admitting the orders of Catholic priests, of course admits the authority over such priests of Catholic bishops and other ecclesiastical superiors, and necessarily recognises their sentences, for offences, which the Church of England considers as offences.

In point of fact, however, at the trial, Dr. Newman was prepared to prove the plea he had been compelled to plead, it not being prudent to depend only on a point of law; and it is important to remark, that though it is both in law and right reason open to a party prosecuted for several separate libels, distinct in date and in detail, to plead separately the truth of each, and to defend himself in proportion to his proof (supposing him not privileged for part or for the whole), the rules of pleading are, or rather were, so technical in their character that if this had been attempted, the prosecutor, who, as it is, demurred twice to the plea, might have raised questions of form which would have protracted the trial until the demurrer was decided or the pleading altered, and so it was deemed best not to attempt it, but to plead one plea to the whole of the alleged libel, incurring thereby all the risk of another technical rule of pleading,—that the whole of a plea must be proved,—the practical result being that Dr. Newman was placed in this position, that he had to prove every one of the separate charges he had made; so that requiring him to enter into proof at all was really to render it morally certain

\* *Flint v. Pike*, 4 Barnwell and Cresswell's Reports.

that legal proof might fail on some part of the plea, and therefore that in strict law a verdict must go against him.

These authorities, however, have been cited for another purpose, which has a more immediate reference to the course of the trial to which we are now coming, viz., to raise a serious question as to the conduct of the Attorney General and of the judge. It will be seen that counsel are even considered legally responsible if they utter observations injurious and calumnious—maliciously and without reasonable and probable cause; and every lawyer knows that malice is usually inferred from the want of reasonable and probable cause. Moral responsibility of course may arise even where legal responsibility does not, and the sense of honour existing in the profession of the bar can scarcely be less rigid than the requisitions of common sense or common honesty. It has, indeed, been laid down by a very distinguished lawyer in our own times, that an advocate is bound to disregard all other considerations save the interest of his client; but as such a sentiment seems simply iniquitous, it surely will not be recognised in a Christian country. It will be, however, for the reader to judge whether it has not been acted upon in this case.

It was so, unless it be held that counsel are justified in defending their client, on his oath alone, by imputing to a large number of persons, as respectable in position, and not impeached in character, either the same offence as that with which he is charged, or other offences equal to or exceeding it in atrocity.

For the Attorney General's defence of Achilli was, as Sir A. Cockburn said it would be, simply this, that every person who swore against him swore falsely, and that any document produced against him was a fabrication. Now Achilli was charged with adultery, &c., and he is defended by imputing to a large number of persons perjury and forgery.

This is no exaggeration; the Attorney General's hypothesis was, some of the most eminent ecclesiastics in Europe had conspired to forge a judgment reciting certain charges against Achilli, and then to suborn false evidence to sustain those fabricated charges! And of course it followed that all the evidence in support of them was false, and the greater portion of it wilfully false. And he had no other ground for this awful hypothesis but the oath of his client, speaking in his own defence, and for his own interest! Is this consistent with morality?

Had he "reasonable and proveable cause" for imputing conspiracy, perjury, and forgery to a number of persons, most of them respectable, many of them reputed to be not only respectable but pious and estimable? Was the oath of his own client "reasonable and proveable cause" for this shocking accusation? If not, then it must have been malignant and mendacious, and consequently immoral.

The writer does not presume to determine the question or even to express an opinion upon it; perhaps his opinion is too strong to

express, and his feelings upon the subject too powerful for expression, His readers will judge for themselves. But he ventures to remark, as justifying him in raising the question, that he is vindicated not merely by the authorities he has cited, but by the actual example of the most high-minded and honourable men at the bar. Cases occur (he is informed, constantly) in which counsel, when they find they cannot defend a client without implicating others whom they do not conscientiously believe guilty, throw up their briefs; and he remembers that Sir A. Cockburn has done so in more than one instance. On an opposite principle the profession of the bar would appear absolutely infamous, and one of far deeper infamy than that of the poor polluted creatures who pace our pavements.

The question will be, then, did Sir Frederic Thesiger really believe in the monstrous theory of perjury and forgery he put forward in his client's defence?\* If decided by the reader in the negative, a painful conclusion must follow, not merely as to the counsel, but as to the judge. It will have been observed that the great authorities already cited show that if the expressions of the advocate are unjustifiable it is the duty of the judge to comment upon and correct them; and so, if the Attorney General were culpable, it would follow that Lord Campbell was equally so for neglecting to discharge the duty, and protect the characters of those who were thus cruelly sacrificed. The writer repeats he expresses no opinion, but leaves it to the reader to determine.

In fact, the reader will have to decide whether Achilli or all the witnesses against him swore falsely. As Sir Alexander Cockburn says, there is no alternative: it is an issue awful in one sense, absurd in another; but such is the issue. And perhaps those who read the trial are in a better position to decide it than those who heard it, being better able calmly to sift and compare the evidence of the witnesses on one side and the other; and especially to compare the evidence of Achilli, not only with that of Dr. Newman's witnesses, but also with that of his own. There is the more necessity for this, as his counsel, contrary to the course always taken when the object is the vindication of character, declined to call him for examination until Dr. Newman's case had been proved; the result of which was not only to take the chance of that case breaking down in proof, but to allow Achilli the opportunity of considering the evidence against him before he was examined,† instead of being examined before he was aware what evidence could be adduced against him; thus depriving the defendant of any power of applying the most effective test of its moral value.‡

\* If he did, he was, I think, the only person in court, except such as were absolutely besotted with prejudice and ignorance.

† Having it taken down by short-hand writers.

‡ Where a person is to swear in his own defence, and does not know what can be proved against him, of course he cannot so safely make general denials of charges, as he can if he have the opportunity of sifting what is proveable against

Sir F. Thesiger, in the argument on the rule to enlarge the rule for the criminal information, contended that a party making charges in this country against another ought to be prepared at any time to prove them in this country! even though they related to acts alleged to have been committed out of this country! Such a monstrous principle staggered Sir A. Cockburn, as well it might; and was too much even for the Lord Chief Justice to adopt to the utmost, although, as may be seen, he in substance acted upon it; and only accompanied it by this mild modification, that it was not an "invariable or infallible rule!" The result of such a rule must be that a person could never safely state anything, however important it may be that it should be known, as to the bad acts of another, abroad or at home, for he must necessarily run the risk of the witnesses being removed out of his reach; and thus, if those persons whom he has accused only wait till then, they will make him an easy prey in the Court of Queen's Bench! How would Sir Frederic or Lord Campbell like the rule applied to their own families? Suppose a daughter were about, for instance, to marry a most abandoned man, of whom some one could publicly testify dreadful deeds done abroad, but against whom he durst not venture to publish them at the risk of being called upon at any time to prove them!

And it will be seen that from first to last there has been on the part of the prosecution an endeavour to protract the proceedings, and to prevent this cause from coming to trial; and that these endeavours have delayed the trial no less than four months, from the 16th February, when it might have come on, to the 21st June, when it did come on. And that during the interval witnesses were lost by removal; just as in the interval between the publication of the article in the *Dublin Review* and of Dr. Newman's lectures, documents had been lost by an accidental burning of archives.

The comparison of a large mass of evidence, such as was taken in this case, can scarcely be performed by the jury, without some assistance from the judge; and, of course, in giving or withholding that aid, great injustice may either intentionally or unintentionally be done. In such a case, not to guide is as bad as to misguide; and the withholding may be as mischievous as the expressing of an opinion. That charge, indeed, may be the more dangerous which misleads, simply by not leading; as a miscarriage of justice may be more difficult to discover which occurs through non-direction than by mis-direction. The very silence of a judge may be fatal; and a smile, or a shake of the head, especially if he be a man of much gravity, may be decisive. There is a phrase which speaks

him; and so shaping his answers exactly to what he knows has been sworn, in such a manner as adroitly to evade absolute contradiction in every case where it is possible to avoid it; and rather to adapt his own evidence to it. The common rule of excluding witnesses from court in cases where there is a conflict of evidence, in order to prevent collusion, is sufficient to show the value of this test, to which Achilli's counsel declined to subject him.

about whispering or smiling away a reputation, and a judge may easily, in a similar way, dispose of a witness, or destroy a great body of evidence, or even damn a whole case. And he can do this, of course, the more easily if he conform to the prejudices and predisposition of the jury. Here it is that a negative is as bad as an affirmative misconduct on the part of a judge, and may cause as serious a miscarriage of justice. In such a case, to do nothing is to do mischief; to be neutral is to be fatal. Silence (to use a common saying) is sometimes, and usually, assent; and the assent of a judge is sanction, and may seem to lend a sanctity even to the coarsest and the vilest prejudice. What matter it if justice miscarry through the corrupt conduct of jury or of judge, by reason of his coercing them to follow his opinion, or leaving them to follow theirs? If either be wrong, the mischief must be the same. Of what consequence can it be whether a judge bully a jury, or pander to their prejudices, if in either case he act unfairly and unjustly? What difference was there between Jeffreys and Scroggs?

This is a delicate topic, but it must be touched upon. The truth must be told—no candid person will doubt it—Dr. Newman was not justly dealt with; he had not a fair trial.

The conduct of Lord Campbell is grievously complained of. The writer heard on all sides, and from the bar, expressions of indignation as to it, throughout the trial, and particularly during the charge. Of course, the writer, or any Catholic, might distrust his own opinion; but these were the opinions of many Protestants, and lawyers; and, as they confirm his own, he ventures to express it. It is conceived that throughout the trial, though it was obvious from the first that the jury had most bigoted and prejudiced dispositions, he very feebly, if at all, tried to check them; that, on the contrary, he, in several instances, openly pandered to their prejudices, and even gave expression to his own, and in opposition to sworn evidence; that, in many instances, he grossly misrepresented the evidence, to the disadvantage of Dr. Newman; that, in every instance, he failed to notice the points tending against Achilli; that he damned and destroyed witnesses without the least excuse; that he dealt most unfairly with the most important document in the defendant's case; and that he silently assented to the atrocious and monstrous theory of perjury and fraud by which the Attorney General defended his client. Indeed, he did more,—he implicitly sanctioned it. The Attorney General's theory was, that all was false; Lord Campbell's, that only a little part was true; which, by implication, gave up the rest. The judgment of the Inquisition, for instance, was represented by Sir Frederic Thesiger as altogether a fabrication; Lord Campbell, that the judgment was genuine, but the reasons it recited—the vital part of it—could not be taken to be so, though proved by precisely the same evidence as the rest. The only difference between the one theory and the other seems to be, that Sir Frederic's was iniquitous and consistent, and Lord Camp-

bell's iniquitous and inconsistent. The atrocity\* of the Attorney General revolted even the Lord Chief Justice; it was too much even for the strong nerves of Lord Campbell. But the noble and learned lord's scruple was only as to the degree; not as to the principle. He was economical; he would not impute perjury and forgery to any greater extent than necessary to secure the acquittal of Achilli. The recent antecedents of Lord Campbell did not inspire Catholics with great confidence in his freedom from prejudice; no one could accuse him of an intention to do injustice; and every one is aware that he possesses some of the most necessary qualities of a good judge,—patient, painstaking, and profound; but this only renders the proof of prejudice more plain: the omissions or misrepresentations of such a judge, who fails not to observe everything, and forgets nothing, are even painfully apparent; though not intentional, they cannot have been accidental. There are judges in Westminster Hall who would have had the confidence of Catholics in such a case, but Lord Campbell is not one of them; and even if he had been, the trial itself would have dispelled the delusion, and satisfied any dispassionate person that, whatever may be the merits or demerits of English administration of justice, the present case can never be appealed to as a proof of its impartiality. There are those, indeed, who believe that justice has never been so grievously violated since the case of Coleman; and as no one can doubt that, had Dr. Newman's life been in peril, the result would have been the same, the parallel is not less truthful than painful.

If the judge be complained of—what of the jury? Of them, truly, it were difficult to speak. Certainly they disappointed no one. In the main, they were a common jury; and as soon as they were in the box, the result was anticipated, which their conduct, and even their countenances, instantly indicated. Hardly had the trial commenced when they eagerly availed themselves of a hint given by the judge, to clamour for a departure from an ordinary regulation.† In the progress of the cause their gestures intimated acquiescence in the vilest calumnies against the Catholic Church. In course of the evidence they interfered in so unjust a manner, that the defendant's counsel meditated throwing up his brief; finally, they disregarded even the directions of the judge, and found a verdict in defiance of evidence, justice, common sense, and law, and which revolted most respectable persons in court.

In ancient times, there was a process by which juries were rendered responsible for gross miscarriages of justice in their hands. The writ of attaint was some security for men's property, liberty, character, and lives. Now, there is none; and all are absolutely in

\* This is Sir Frederick's own phrase, and he must excuse its use.

† The exclusion of Achilli from court while witnesses were examined, against whom he was afterwards to swear in his own defence!

the power of any "common jury" who may be empannelled upon them. They are perfectly irresponsible.\* Why should juries be the only parties in the country acting without responsibility, and under no apprehension of punishment for the most flagrant iniquity? Is it because, by committing perjury, they may commit murder? Have no such judicial perjuries been committed?† Ought liberty or character to be less secure than life?‡

The reader will perceive serious and painful issues are raised in the report now presented; grave and grievous complaints are made of a monstrous miscarriage of justice. It is for him to judge whether the defence was proved in substance; and whether almost all its charges, as many of them as were material, were not clearly made out; so, if though it might be necessary to pass a verdict for Achilli, it would only be a technical one, and Dr. Newman would be not only morally, but, in substance, legally justified, and could not receive any but a merely nominal sentence.

Such are the issues the reader has to try, which really amount to this:—Did Dr. Newman get justice in the Queen's Bench? It is the writer's sincere conviction, and he is certain that of most of those who witnessed the proceedings, that Dr. Newman did not get justice; but was, from first to last, most unfairly and unjustly dealt with. The *Times* thus comments on the trial:—

"We wish we could conclude our observations on this case without saying anything calculated to imply a censure on the jury or the judge, under whose auspices they have, it seems to us, so signally miscarried. From the time when one of them objected to the exclusion of Dr. Achilli from the court, and another to the searching and reasonable question as

\* Let this be considered in justification of some appeal to public opinion, at all events.

† Let the reader be reminded of the case of the woman who was tried towards the end of last year at the Old Bailey, for perjury committed at the Hammer-smith Police Court, in support of a charge made by her against the nuns of the Good Shepherd Convent. She was acquitted without a moment's hesitation on the part of the jury, and yet, in less than a month, I think, came forward and made a voluntary statement that her charge against the nuns was a lie from beginning to end. A number of witnesses were brought forward in support of the charge of perjury—Protestant as well as Catholic; among the latter two or three Catholic clergymen. For the defence, not a single one.

‡ The following is the Jury List:—

1. Edmund Townsend, 3, Bury-place, Bloomsbury, merchant.
2. John Carter, South Molton Street, merchant.
3. Henry Weston Elder, 7, Commercial-place, St. Luke's, merchant.
4. William John Powell, 11, Highbury-place, merchant.
5. John Stevens, 39, Torrington-square, merchant.
6. Charles Turner, 26, Hamilton-terrace, Marylebone, merchant.
7. John William Watson, Hornsey-lane, Highgate, merchant.
8. John Sewell, 3, Landsdowne-place, North Islington, merchant.
9. Henry Huth, 12, Sussex-place, Marylebone, merchant.

TALES ADDED.

10. George Pierce, Strand, bookseller.
11. Samuel Parker, Bedford-place, brass-founder.
12. Elias Morgan, Norfolk-street, lodging-house-keeper.

to his general chastity, which he did not find it expedient to answer, till the faltering announcement, preceded and followed by unchecked applause, that the justification was not proved to their satisfaction, there is every reason to think that the case was not viewed by the jury with complete impartiality and absence of sectarian feeling. Perhaps this was hardly to be expected; but when we are told that Catholic and Protestant have nothing to do with the decision, we should like to ask who believes that if Dr. Achilli had continued a member of the Church of Rome to the present time, and the charge against him had been contained in a speech of the earl of Shaftesbury, the verdict would have been the same—*minus*, of course, the cheers and the popularity? Many of the witnesses were poor, but it is among the poor that the profligate seek their victims. They could not be corroborated as to the fact, for that is a matter of secrecy; they were not discredited, they were not broken down, they were simply put aside and disbelieved. The principle upon which this case was decided would put an end to all proof by human testimony. If we are to require publicity in matters whose very essence is secrecy, virtue in witnesses the very nature of whose confession degrades them, and confessions by the accused of what every worldly interest binds them to deny, we may shut up our courts of justice, proclaim impunity for crime, or use ordeals and divinations as a substitute for the investigation we have rejected.

“If there is to be no presumption in favour of assertions attested by oath, no public writer can venture, should the public interest—as was admitted in the case of Dr. Newman by the prosecuting counsel—ever so imperiously require it, to make statements, however well founded, criminatory of the character of another. Who can hope to be believed when such a mass of evidence has been flung aside as worthless?”

His own opinion is, perhaps, of no value; he places the grounds of it before the reader, in the preliminary proceedings, as well as on the trial itself. Appeals, on the part of Dr. Newman,\* from Lord Campbell and a special jury to the profession and to the public; from the verdict in the Queen's Bench to Westminster Hall and the people of England. They will do justice. They will not swallow the monstrous and atrocious hypothesis of perjury and forgery by which half a hundred persons are to be convicted that one may escape. They will not sanction a perversion of justice, in order to secure a triumph for Protestantism. They may not appreciate religious honours, but they venerate religion; they may reluctantly tolerate Popery, but they will not perpetrate iniquity. They love truth, and will not forget that, in the eloquent language of Sir A. Cockburn, whose defence was every way worthy of his illustrious client,—“Justice is one of the dearest and eldest born of the emanations of the Divine Being!”

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\* He begs to say that he is a stranger to Dr. Newman, and has no other feeling on his behalf than he would have for any one unjustly treated, especially one whom he respects as a gentleman, a scholar, a Christian, and a clergyman.



## PRELIMINARY PROCEEDINGS.

COURT OF QUEEN'S BENCH, WESTMINSTER,

November 4th, 1851.

*Sir F. Thesiger* moved for a rule to show cause why a criminal information should not issue against Dr. Newman on the following affidavit :—

“Giovanni Giacinto Achilli, of Shaftesbury Crescent, Pimlico, *Magister Sacræ Theologiæ*, or Doctor of Divinity,<sup>a</sup> maketh oath and saith, that he is now, and since March, 1850, has been resident in England, and is now, and since May, 1850, has been minister of the Gospel to the Italian Protestant Church, Dufours'-place, Broad-street, Golden-square, Middlesex, and that such chapel is duly certified and registered as a religious place of worship. That he is an Italian by birth, and was born in Viterbo in the Roman States, 1803, and was educated in the Roman Catholic faith; and that in 1819, he being then of the age of sixteen, he entered into the Dominican convent of St. Quercea at Viterbo, as a novice, and after a year's residence in such convent professed himself a monk of the Dominican order. That about the year 1825, he received priest's orders, by special dispensation granted by the Pope (Leo XII.) at the request of the duke of Lucca, and in 1833 received the degree of doctor of divinity in the College of Minerva at Rome.<sup>b</sup>

“That as early as 1829, he entertained doubts as to some of the doctrines of the Church of Rome, and that notwithstanding such doubts he was for a long time unwilling to leave the Church of Rome;<sup>c</sup> but

<sup>a</sup> In the Dominican order, the degree corresponding to that of doctor in the secular clergy, and also this title, conferred on the Dominicans through special privilege, is given upon stipulation, on oath, to teach the doctrines of St. Thomas Aquinas on every point (*jurare in verba Thomæ*), so that Achilli must have forfeited the title, which is not a mere literary one, compatible with the various doctrinal teachings.—*Dublin Review*. And he took this oath in 1833! In his marriage certificate he calls himself “cavalier.”

<sup>b</sup> The college of the Dominicans.

<sup>c</sup> Why so? For he has declared that “whatever iniquity, wickedness, and abominations ever existed upon earth will be found among priests and monks” (in one sense, a truism; for the worst men have been found “among” them); “and

that, in the exercise of his duties as confessor and preacher, his practice and teaching were in some respects openly at variance with, and falling short of the practice and doctrines of the Church of Rome.<sup>d</sup> That in 1835, he being then about to leave Rome for Capua,<sup>e</sup> solicited from the Pope permission to secularize, *i. e.*, to quit the monastic state and remain a simple priest,<sup>f</sup> and that such permission was not given until after many applications had been made, supported by the recommendations of the cardinal archbishop of Capua; and that in August, 1839, by the permission of the Pope, he finally separated himself from the order.

“That his practice, preaching, and conversation while at Capua and Naples for seven years, from 1835 to 1841, drew much attention upon him, and, as he believes, made him suspected and disliked by many members of the Church of Rome, and in particular by monks of the monasteries at Naples, of whose life he disapproved, and expressed his disapprobation. That in 1841, he was called by private business to Rome,<sup>g</sup> where he had often been advised to betake himself by ecclesiastics

that in the cloisters immorality of every description reigns.” And in his book he says that he had at this time become perfectly persuaded of the imposture of the principal dogmas of the Catholic faith. Why, then, “unwilling to leave the Church of Rome?”

<sup>d</sup> Any Catholic can easily conceive the truth of this statement. Yet he was as he says, offered professorships!

<sup>e</sup> For what cause? Achilli, in his first published statements, asserts that he was, in 1833, offered three professorships; and says, “I have, then, and for that sole cause (what cause?), relinquished my chair at Viterbo.” In his late book, he says the general of his order forced him to give up his chair and leave Viterbo in 1833—a year or so after the first case sworn to at the trial took place. “There was then given me the charge of visitor of the convents of the Dominicans in the Roman States and Tuscany.” There is no visitor of the order but the provincial, who, at that time, was Father Brochetti. It is an office of great importance, very likely to be given to a priest of six years’ standing, whose preaching was openly at variance with the practice and teaching of the Church of Rome. Achilli states, that at the end of 1833 he gave up his three professorships, and at the beginning of 1835 went to Capua: this leaves just one year for his life in Rome. Yet, the published statements of his friends assert that he was vicar of the Master of the Holy Palace, and professor of moral philosophy at the Minerva College, both in Rome. And he represents that at the same time he was visitor of the Dominican order in the Roman States! Now the mastership of the Holy Palace is one of the highest in the order, and held for life. The present master succeeded to the office in 1832, his predecessor being created cardinal, and as his *socius* (there is no vicar) he appointed Father Modena, one of the most eminent men of the order, who has held the post ever since. The hon. sec. of the Society for Religious Improvement of Italy, improves upon the history of Achilli by making him master and vicar too! and visitor, not only of the Roman States, but of Lombardy likewise!! and all this in the course of one year!!!

<sup>f</sup> In his book he says he was “disgusted with the Dominicans.” Were they so with him? It appears from his book they complained of him, and that there were “evil reports” against him in 1833, at Viterbo.

<sup>g</sup> In his book (which was put in as evidence against him), he says that when he was in prison, in 1841, there were reports that he had been guilty of other crimes besides those for which he alleges he was imprisoned. Now the affair of the Principes occurred at the end of 1840, and her parents complained in the spring of 1841. See also his cross-examination as to his having been sent out of Naples in charge of the police. Moreover, he says that his friends exerted themselves with the British consul to clear him from the charges. See note on his book, *post*, in report of trial.

of the Church of Rome, professing to advise him for his own advancement; and that while at Rome he was arrested by the Inquisition,<sup>h</sup> and remained in confinement for three months, at the end of which he was released,<sup>i</sup> and left Rome in September, 1841, and went to Ancona, and a short time after sailed to Corfu.<sup>j</sup>

"That from the time of his leaving Ancona<sup>k</sup> he has always professed openly his renunciation of the faith and doctrines of the Church of Rome.<sup>l</sup> That he has read the following passage in No. V. of a series of lectures entitled "Lectures on the Difficulties of Protestantism, by J. H. Newman, D.D., priest of the congregation of the Oratory of St. Philip Neri, delivered to the Brothers of the Little Oratory."<sup>m</sup>

"And in the midst of outrages such as these, my brothers of the Oratory, wiping its mouth and clasping its hands, and turning up its

<sup>h</sup> In his narrative he says, that in 1841, he made to the Inquisition his "renunciation of all the honours and employments which he had enjoyed up to that time." What were they? He was secularized in 1839.

<sup>i</sup> Very easily released! considering the cruel character of the tribunal, and that for years, according to Achilli's own account, he had been very obnoxious!

<sup>j</sup> His friends of the Italian Improvement Society, in their published memorial, state that he "escaped" from Rome to Corfu; how so, if "released?" and then went to Ancona. In his own narrative he says he is "far from being displeased with the Inquisition," and speaks of the "trifling correction" he had received, which clearly implies that he had been "corrected?" It is stated in the *Dublin Review*, it was by imprisonment—from which he escaped.

<sup>k</sup> Or, rather, escaping from his imprisonment.—See his evidence at the trial.

<sup>l</sup> Not until after he had been "corrected" by that Church. What was there in that to lend him any new light as to her doctrines?

<sup>m</sup> St. Philip Neri was a practical philanthropist, whose memory, after the lapse of three centuries, is still enthusiastically cherished by Roman citizens, as the regenerator and benefactor of their country. Indeed he was called the Apostle of Rome. Florence was his native city, where he was born in 1515, and, at the age of eighteen, he quitted all for the metropolis of the Christian world. Here he passed the remaining sixty-two years of his life, without going further beyond the Holy City walls than was necessary to visit the Seven Churches. In the porches and catacombs of these venerable sanctuaries he was accustomed to pass the night in prayer. He shunned honours and dignities. The mitre, with the title of cardinal, repeatedly offered him by Clement VIII. and Gregory XIV., he never would accept. The great hospital for pilgrims and convalescents is a permanent monument of his charity. He founded a society of pious clergymen, called "Fathers of the Oratory," to promote moral improvement and religious education among all classes of the people. For this purpose he enjoined daily preaching short sermons, being enlivened by anthems or litanies, with musical accompaniments. Connecting the national taste for this pleasing art with religion, he made both useful auxiliaries to his mode of popular instruction. A French tourist calls him the Vincent de Paul of Italy, and observes that the genius and taste of the Italians were admirably combined with his apostolic virtues. Alluding to the concerts of sacred music, which owe their origin to the refined zeal of the saint, and are usually called "Oratorios," from the oratory or chapel wherein they usually take place, in order to attract youth from theatres and bad company. In all his undertakings, in fact, St. Philip Neri, endeavoured to render religion more attractive, if possible, than vice. Illustrious for sanctity and miracles, he at length paid the debt of nature, at the age of eighty, on the 26th of May, 1595; and twenty-seven years after, with St. Ignatius and St. Francis Xavier, he was canonized. On the anniversary of his death, the chamber he once occupied is thrown open to the public; and his festival is kept in the adjoining church, where the pope and cardinals go in state to divine service.—*Reminiscences of Rome*. Such is the order to which

eyes, it trudges to the Town Hall to hear Dr. Achilli expose the Inquisition. Ah! Dr. Achilli, I might have spoken of him last week, had time admitted of it. The Protestant world flocks to hear him, because he has something to tell of the Catholic Church. He has something to tell, it is true; he *has* a scandal to reveal, he *has* an argument to exhibit. It is a simple one, and a powerful one, as far as it goes—and it is *one*. That one argument is himself; it is his presence which is the triumph of Protestants; it is the sight of him which is the Catholic's confusion. It is, indeed, our confusion, that our Holy Mother could have had a priest like him. He feels the force of the argument, and he shows himself to the multitude that is gazing on him. 'Mothers of families,' he seems to say, 'gentle maidens, innocent children, look at me, for I am worth looking at. You do not see such a sight every day. Can any Church live over the imputation of such a production as I am? I have been a Roman priest and a hypocrite; I have been a profligate under a cowl; I am that Father Achilli, who, as early as 1826, was deprived of my faculty to lecture, for an offence which my superiors did their best to conceal; and who, in 1827, had already earned the reputation of a scandalous friar. I am that Achilli, who in the diocese of Viterbo, in February, 1831, robbed of her honour a young woman of eighteen; who in September, 1833, was found guilty of a second such crime, in the case of a person of twenty-eight; and who perpetrated a third in July, 1834, in the case of another aged twenty-four. I am he, who afterwards was found guilty of sins, similar or worse, in other towns of the neighbourhood. I am that son of St. Dominic who is known to have repeated the offence at Capua, in 1834 and 1835, and at Naples again in 1840, in the case of a child of fifteen. I am he who chose the sacristy of the church for one of these crimes, and Good Friday for another. Look on me, ye mothers of England, a confessor against Popery, for ye 'ne'er may look upon my like again.' I am that veritable priest who, after all this, began to speak against, not only the Catholic faith, but the moral law, and perverted others by my teaching. I am the Cavaliere Achilli, who then went to Corfu, made the wife of a tailor faithless to her husband, and lived publicly and travelled about with the wife of a chorus singer. I am that professor in the Protestant college at Malta, who with two others was dismissed from my post for offences which the authorities could not get themselves to describe. And now attend to me, such as I am, and you shall see what you shall see about the barbarity and profligacy of the inquisitors of Rome.' You speak truly, O Achilli, and we cannot answer you a word. You are a priest; you have been a friar; you are, it is undeniable, the scandal of Catholicism, and the palmary argument of Protestants, by your extraordinary depravity. You have been, it is true, a profligate, an unbeliever, and a hypocrite. Not many years passed of your conventual life, and you were never in choir, always in private houses, so that the laity observed you. You were deprived of your professorship, we own it; you were prohibited from preaching and hearing confessions; you were obliged to give hush-money to the father of one of your

Dr. Newman, and other Oxford converts, have devoted themselves. Such was the saint whose spiritual children are to be subjected to insult for carrying on their labours of love in this great city, wearing, with natural affection, the "habit of their order,"—nothing but a plain black suit, after all. The "Little Oratory" is a fraternity of laymen attached to the Oratory for purposes of moral and religious improvement.

victims, as we learn from the official report of the police of Viterbo. You are reported in an official document of the Neapolitan police to be 'known for habitual incontinency;' your name came before the civil tribunal at Corfu for your crime of adultery. You have put the crown on your offences by, as long as you could, denying them all; you have professed to seek after truth, when you were ravening after sin. Yes, you are an incontrovertible proof that priests may fall and friars break their vows. You are your own witness; but while you *need* not go out of yourself for your argument, neither are you *able*. With you the argument begins; with you too it ends: the beginning and the ending you are both. When you have shown yourself, you have done your worst and your all: you are your best argument and your sole. Your witness against others is utterly invalidated by your witness against yourself. You leave your sting in the wound; you cannot lay the golden eggs, for you are already dead."

"That he is the person here referred to, and that in May, 1850, he was present at the Town Hall, Birmingham, at a meeting of the Evangelical Alliance, and on no other occasion. That he then addressed the meeting, but did not use such words as are above mentioned. That he did then describe the constitution of the Inquisition, and openly express his abhorrence of its practices; <sup>x</sup> but he did not speak of any individual members of the Church of Rome, <sup>y</sup> nor make any charge against the moral character of any individual whatever. <sup>z</sup> That except in his disbelief of some doctrines peculiar to the Church of Rome, he has never been an infidel, but has always believed, and still does believe in the means of salvation made known by the Gospel; and he has never affected to believe, and has not inculcated any doctrine of the falsehood of which he was satisfied. <sup>a</sup> That he has never been a profligate, nor indifferent to a sense of virtue and decency. That he was not so early as 1826, nor at any other time, deprived of his faculty to lecture for an offence his superiors did their best to conceal; and that he has not, at any time or for any cause, been deprived of his faculty to lecture. <sup>b</sup> That he had not in 1827 earned the reputation of a scandalous friar. That he has not at any time of his life brought (by his own consent <sup>c</sup>) any scandal on himself or on the Romish Church, <sup>d</sup> except so far as any

<sup>x</sup> The reader will remember the passage previously referred to (see Introduction, p. 6), and will readily conceive the forbearance of the writer of that paragraph. This sentence in the affidavit was obviously suggested by counsel's inquiries, as to whether Achilli had provoked a public discussion of his own conduct by public accusations against the conduct of others; which indicates counsel's consciousness, that this would tend to give the publication of Dr. Newman's charges a privileged character.

<sup>y</sup> Yet he declares he was "far from being displeased at the conduct of the Inquisition."—See his narrative.

<sup>z</sup> In his book he put forth shocking, yet stupid, charges against the character of certain individuals holding office as inquisitors.

<sup>a</sup> But he had already stated, that for years before he left off preaching and teaching the doctrines of the Church of Rome, he had ceased to believe divers of their doctrines; and that he celebrated services he believed to be impostures.

<sup>b</sup> How so? He had already stated that, in 1841, "he gave up" all his honours or offices. And see the judgment of the Inquisition, proved at the trial.

<sup>c</sup> What does this mean?

<sup>d</sup> Was it no scandal that while exercising the duties of confessor and preacher, his "practice" should be "openly at variance with the doctrines and practices of the Church?"

such scandal may have been consequent on his gradual abandonment of the doctrines peculiar to that Church.<sup>e</sup> That he did not, in the diocese of Viterbo, or at any time or place, rob of her honour any young woman, and was not, in 1832, or at any other time, found guilty; nor was he guilty of any such offence; and did not perpetrate a third such crime in 1834, or at any other time; and that he was not, at any time or place, guilty of similar sins or worse,<sup>f</sup> &c. That he has never spoken against the Catholic faith, so far as received by him; nor against the moral law of the Church; nor according to his own conscientious belief has he perverted others by his teaching.

“That he has not induced any married woman to be unfaithful to her husband, but he admits that while at Corfu he had a servant of the name of Corribone, who had, as he believes, been a chorus-singer, and that the wife of Corribone lived with her husband under the defendant’s roof, and accompanied her husband while travelling with the deponent, but he denies that he had improper acquaintance with her, or that there was any unbecoming familiarity or intimacy between them.<sup>g</sup> That it is true that he was deposed from his post of professor at the Protestant college at Malta,<sup>h</sup> but that the cause of his deposition has been stated in a report of a committee of the college (published in the *Record*, 9th December, 1850<sup>h</sup>), and that in such report the following passage occurs:—‘After Dr. Achilli’s appointment, various unpleasant statements were made to the committee as to his past history, which was submitted to him; but, as they were denied by him, and were not supported by any sufficient evidence, they were rejected by the committee. It was not until he interposed to quash the investigation into charges affecting the moral character of several priests,<sup>i</sup> by sending his friend Saccares to Sicily that the committee resolved to have no connection with him. Such a step was felt by the committee to be an act requiring, apart from the consideration of any statement affecting his own character, his immediate removal from so responsible a position.’<sup>j</sup>

“That it was not to his knowledge or belief ever alleged that he was dismissed from his position for any offence which it would be unbe-

<sup>e</sup> His denials in the precise language of the libel, as on the trial he negatived them in the precise terms of the plea, need scarcely be repeated, as they merely negative each charge separately.

<sup>f</sup> See his cross-examination, in which he declines to answer whether he had not been guilty of “similar crimes” at each place in succession he visited.

<sup>g</sup> Did not this admission give the Court ground to call upon him in making an application for the extraordinary interference of the Court by a criminal information, to satisfy them by explicit statements supported by other evidence than his own, as to the true reason of his dismissal, especially considering that he directly after discloses that the very same kind of charges as the alleged libel contained had been then made against him? Did the subsequent part of his affidavit come up to the usual requisition of the Court in that respect?

<sup>h</sup> So long, then, as a whole year before the information, it had been published in a London newspaper that “various unpleasant statements had been made respecting his past history,” and that he had been afterwards dismissed from a responsible position in a Protestant college; and the affidavit does not disclose that he took any notice at all of this publication.

<sup>i</sup> Who were those priests? Did they include Achilli himself, or any acquaintance of his? Ought not the affidavit to have explained that?

<sup>j</sup> Let the reader remark how far this admission is answered by the rest of the affidavit.

coming to describe, or any offence affecting his moral character,<sup>k</sup> except so far as his sending away Signor Saccare may be considered such an offence;<sup>l</sup> and that he always denied, and it is not true that he sent him away from the college,<sup>m</sup> but that he left the college voluntarily;<sup>n</sup> and he, being aware of his resignation, requested him to go to Sicily<sup>o</sup> for the purpose of distributing Bibles and tracts.<sup>p</sup>

"That he has never been prohibited from preaching, or hearing confessions.<sup>q</sup>

"That, to the best of his belief, he has never been reported in the official documents of the Neapolitan police to be known for habitual incontinency. That he believes that a tailor at Corfu, named Nicolo Garrimoni, did, in answer to a petition for alimony by his wife, charge his wife with adultery with the deponent, but he believes<sup>r</sup> that the charge was not brought before<sup>s</sup> any civil court, or any court whatever; but that the fact of the adultery was alleged in a paper professing to be prepared for the court in the matter of the said petition; and that the deponent, having been made acquainted with the fact that such charge had been made,<sup>t</sup> expressed his willingness<sup>u</sup> to meet the said charge in court; but he never heard that the charge was brought forward,<sup>v</sup> and believes that it was not, and denies that there was any ground for it.<sup>w</sup>

LORD CAMPBELL said, disregarding the "ribaldry" in the previous portion of the passage, the latter part of it was clearly libellous; and the rule was ordered.

<sup>k</sup> He admits that a year before the *Record* published a statement, the effect of which was to represent that he *had* been; and he does not say that he took any public notice of this.

<sup>l</sup> As it was considered (he admits) by the committee.

<sup>m</sup> But he does not deny that he sent him away from Malta; and that he sent him away in order to quash the investigation.

<sup>n</sup> Was it, as Achilli "left" Rome "voluntarily," by way of escape?

<sup>o</sup> Then he did "send him away?"

<sup>p</sup> And for no other purpose less pious and more practical? Achilli is silent upon *that point*, which it will be perceived is *the point*. He does not deny that he sent him away from the island to interfere in the investigation alluded to; and for which the committee say they decided he ought to be dismissed.

<sup>q</sup> Not when the Inquisition, in 1841, deposed and suspended him? The reader is requested to refer to his cross-examination on this point, and to the verdict of the jury, who said, in direct contradiction to this statement, on his oath, that he was by a decree of the Inquisition totally and perpetually deprived and suspended. From this specimen the reader will appreciate the averments of the affidavit. *Ex uno disce omnes.*

<sup>r</sup> Strange word this. Did he not ascertain?

<sup>s</sup> How "not brought before" a court, when it was alleged in answer to a petition for alimony? Let the reader carefully compare this passage with the charge in the alleged libel and with the evidence.

<sup>t</sup> How "made," if not "brought before a court?"

<sup>u</sup> How did he "express" this? Privately, or publicly?

<sup>v</sup> He had just stated that he had heard that the charge had been "made" on a petition for alimony, in a court of justice.

<sup>w</sup> But he does not say that he ever publicly denied the charge; or ever publicly challenged an inquiry into it. Conceive of a clergyman of any Church hearing of such a charge not taking this course, and then coming, years after, for a criminal information to clear his character! Can any one recollect or refer to any case of an information ordered on such an affidavit?

## COURT OF QUEEN'S BENCH—Nov. 7, 1851.

Sir A. Cockburn (Attorney General), moved for a cross rule nisi, for enlarging the rule nisi for a criminal information until Easter Term, in order to afford the defendant time to answer the matters in the affidavit of prosecutor, and show cause against the rule.

The defendant, Dr. Newman, made an affidavit, stating,—

“That he is at present unable to answer the several matters contained in the affidavit of Giovanni Achilli, by reason of the fact that the several matters referred to in the affidavit, and which form the subject of the alleged libels complained of by him (or the greater part thereof), occurred at periods of time long passed, in parts beyond the seas, and places far distant from this kingdom, and that in order to answer the said matters and show cause against the rule, it will be necessary for the deponent to obtain evidence from various parts and places beyond the seas, and from countries far distant from these realms, which evidence it will be wholly impossible to procure and bring before the Court for a considerable time, and until the expiration of several months next ensuing; that unless such time is granted and such delay allowed for the procuring of such evidence, it will be wholly impossible for him to answer the said matters contained in the affidavit,<sup>x</sup> and to show cause against the rule; and he is informed and verily believes that if such time is granted, he will be able to obtain evidence from such foreign parts and places sufficient to enable him to answer the matters contained in the affidavit,<sup>y</sup> and to show cause against the rule, and to satisfy the Court that the rule ought not to be made.”<sup>z</sup>

The learned counsel cited the case of *Pacifico v. The Herald*, in which time had been given to answer a similar application, the matters charged having occurred abroad.

The rule nisi was granted.

<sup>x</sup> It must be obvious that this would be so; though it might have been possible to give reasons for not “answering the said matters,” *i. e.*, by showing the publication in the *Dublin Review*, from which the alleged libel was taken, in substance, and that prosecutor had not noticed it.

<sup>y</sup> Dr. Newman here distinctly swears, to his belief, that he can prove the charges; yet the Court considered he had not sworn to his belief, that the charges were true! As if they could be proveable, if not true!

<sup>z</sup> Which might be done without proving the truth of the charge, as by showing that abroad those charges had been publicly made, and not publicly answered; which is a sufficient answer to the application for a criminal information.—See Introduction.

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## COURT OF QUEEN'S BENCH—Nov. 21, 1851.

*(Sittings in Banco.)*

The rule for a criminal information having issued, and an intermediate cross rule having been obtained, calling on Dr. Achilli to show cause why the first rule should not be enlarged till the first day of next Easter Term, to enable Dr. Newman to obtain from Italy the evidence which he believed he could there procure to show that he was justified in publishing the alleged libel.

Sir *Frederic Thesiger* now showed cause against the cross rule, which he said was in contradiction to the principle he had always understood to govern the conduct of this Court, that when one man took on himself to slander the character of another, the slanderer should be prepared at once to justify the slander. He should not, however, rest on that principle; because he thought that, entirely disregarding it, this was not an application which on any fair and reasonable grounds ought to be granted. The learned counsel read and referred to the affidavit.

The Court would observe that the ground of this application for delay was that an opportunity should be afforded to Dr. Newman and the publisher to send a roving commission to investigate into the whole life of Dr. Achilli for a period of thirty-two years; and it was remarkable that in founding the application on these affidavits Dr. Newman did not vouch, in the slightest degree, his own belief in the truth of the charges he had made.<sup>a</sup> He (Sir F. Thesiger) was apprehensive of allowing the defendant this opportunity of thus seeking all over Italy for evidence; for, considering who the parties were, and what was the nature of the libel; considering, too, that one of the parties had turned from, and the other had turned to, the Church of Rome,<sup>b</sup> he could not shut his eyes to the possibility of affidavits being easily procured<sup>c</sup> in Italy from persons into whose character and conduct there would be no means of making any

<sup>a</sup> Dr. Newman stated, as will be seen, not in the "slightest degree," but in the strongest possible way, that if he had time, he should be able to prove the truth of the charges he had made. Was not this the best way of alleging his own belief in their truth? If they were proveable, of course, they must be true (though the course might not hold, and they might be true, and not proveable); and he stated his belief that they were not merely true, but also proveable. And this was deemed, not only by counsel but the court, not a sufficient averment of his belief in the truth of the charges! Certainly, it is not such hard swearing as is usual in courts of justice; but, perhaps, swearing is none the worse for not being so very hard; and it seems strange that judges should object to it; and think an affidavit insufficiently strong, because sufficiently scrupulous.

<sup>b</sup> What had that to do with the case? Sir Frederick, however, is too acute an advocate to have mentioned it, if he did not well know its effect on the mind of the Court.

<sup>c</sup> Why should the learned counsel have presumed that false affidavits were not punishable abroad? His argument is founded on that utter assumption.

inquiry, nor any into the truth of their statements. They would be persons making affidavits out of the jurisdiction of this Court, not only without the power of Dr. Achilli to contradict their testimony, but without any danger on their part of punishment for making untrue statements. Nothing could be more unfair to Dr. Achilli than to allow a proceeding of this kind; and it was quite unnecessary for justice to Dr. Newman to allow it; for, under the statute 6th and 7th Vict. c. 96 (Lord Campbell's Act), it was competent to Dr. Newman to plead that the alleged libel was true, and that it was published for the public benefit.<sup>d</sup> It would be hard indeed towards Dr. Achilli to give to Dr. Newman the chance of getting an opportunity to fish for evidence on affidavit, when he might under his pleas, and at a different stage of the cause, have a commission to examine witnesses, in which Dr. Achilli could join. The persons from whom these affidavits were asked were those over whom the Court could exercise no jurisdiction, and under the circumstances of this case such a proceeding would be unjust and dangerous towards Dr. Achilli. The Attorney-General, in moving for the rule, had quoted the case of *M. Pacifico* and the *Morning Herald*, but that case was not applicable. *M. Pacifico* had complained of a libel published in a letter from the correspondent of the newspaper resident in Greece, and time was given to enable the proprietor of the newspaper to inquire from his correspondent on whose authority he had made the statement.<sup>e</sup> But besides, the answer to that case was, that what was done there was done by the consent of *M. Pacifico*.<sup>f</sup> He (Sir F. Thesiger) had mentioned the matter to his learned friend out of court (who then appeared for *M. Pacifico*), and who had at once assented to it;<sup>g</sup> and their lordships were aware that the inquiry proved perfectly satisfactory so far as *M. Pacifico* was concerned.

Mr. *T. F. Ellis*, on the same side, said that, as to the case of

<sup>d</sup> Before this Act the truth was not a justification on the trial of the information, but was on the application for the information (see Introduction, p. 14), and then the question was decided on affidavits, the prosecutor having to purge himself satisfactorily from all the imputations, and enter into full explanations of the transactions alluded to, in order, as far as possible, not merely to deny, but to disprove the charges; whereas on the trial the prosecutor can cast the whole onus of proof upon the defendant. As respects informations, therefore, this Act is not of much benefit, especially as it requires that the defendant should plead (and prove), not only the truth of the libel, but that it was for the public benefit, with the particular facts showing that it was so.

<sup>e</sup> This is palpably incorrect; and as the writer was not in court, he can only conjecture it to be a mis-report. It is obvious that the party responsible must have had to swear to his belief of the truth of the charges (as Dr. Newman did), and although the correspondent, or the person on whose authority he made the charges, made affidavit abroad in confirmation, these affidavits would have been open to the very objection taken by Sir Frederick to the affidavits to be prepared in confirmation of Dr. Newman's.

<sup>f</sup> As Sir Frederick ought to have done in this case; because it was fair, reasonable, and just; and the refusal of it must cause a failure of justice—as he might have foreseen.

<sup>g</sup> See the preceding note. He said much more.

M. Pacifico and the *Morning Herald*, that newspaper avowed the source of its information to be the letter of its own correspondent, and consequently the paper there stood in the situation in which the publisher of this libel stood before Dr. Newman admitted himself to be the author of the libel.<sup>h</sup> To make that case in point with the present, this application to the Court ought to have been made by the publisher, for time to examine the author, Dr. Newman, as to the sources from which he had derived his information!<sup>i</sup> It was not at all in point to support an application by Dr. Newman himself, for he was the author, and ought to know on what authority he published the libel.<sup>j</sup> Then, as to the affidavits, the Court must be struck with what Dr. Newman did and what he did not say. It was only by implication that they could learn what it was that Dr. Newman wished the opportunity to prove.<sup>k</sup> The fact of the publication of the libel was now admitted; the truth of the charges was all that now remained. As to them, Dr. Newman neither said that he now believed those charges, nor did he even state that he ever had believed one syllable of them; he merely said that "the said matters referred to in the affidavit of Dr. Achilli" occurred at such and such places and times.<sup>l</sup> In order to try the sufficiency of this affidavit, the Court must consider what would be the situation (he said this without meaning any personal imputation on Dr. Newman, but merely to test a legal result) of Dr. Achilli if he wanted to assign perjury on this affidavit?<sup>m</sup> If there should be twenty witnesses to prove that on as many occasions the maker of this affidavit had declared that he did not believe one of the imputations contained in the libel, no assignment of perjury in the affidavit could be sustained; for nowhere was it there stated that the person who made the affidavit did believe the imputations.<sup>n</sup> It was further to be remarked, that Dr. Newman did not say from whom he got the information, nor from whose testimony he expected to substantiate it.<sup>o</sup> He hoped that he should not be

<sup>h</sup> And, therefore, in the position in which Dr. Newman stood, after he had admitted himself the author, as legally responsible.

<sup>i</sup> That was not the object of the application in the case cited; for of what use would it have been to ascertain the "source" whence the information was obtained, unless it was sworn to; and if sworn to, it must have been sworn to abroad, as in this case was proposed and objected to.

<sup>j</sup> How absurd to represent that as the question! The question was, not as to authority, but proof, or affidavits as to the truth; and these affidavits must, in either case, have been made abroad.

<sup>k</sup> Parties seldom assent to anything, in such cases, unless they are pretty certain it could be enforced upon them.

<sup>l</sup> And necessary implication is as good as direct assertion. Dr. Newman swore he believed the charges proveable.

<sup>m</sup> This is the true test, no doubt.

<sup>n</sup> That is stated, and nothing could be easier than to indict Dr. Newman for perjury, in swearing that he believed the charges proveable—provided Achilli could prove them false; for if false, Dr. Newman's affidavit must have been at least as false as if he had sworn he believed them true, for he swore he believed them proveable.

<sup>o</sup> Which Achilli wished much to ascertain, no doubt, for reasons that will

thought to be construing the affidavit too strictly, but he thought that a different rule of construction of words and expressions must be applied in cases where a man used words, of the meaning and effect of which he was ignorant, and where words were used by men who had passed their whole lives in tracking their way through tortuous paths of subtle controversy,<sup>p</sup> knowing full well the value of the words which they used, and the danger of the words they abstained from using. He would not suggest in which of these two classes of persons the maker of this affidavit was to be placed, or how far he stood between the two extremes, but the Court must look at the form of the affidavit as it now stood. So looked at, the document exhibited a very remarkable instance of mental reservation. Here was a case in which A. complained of B., for having libelled him: B answers, "I admit that I published the libel—I do not say that I believe it.<sup>q</sup> I do not say that I ever have believed it; but, if you will give me a few months' time, I may perhaps find in Rome or Naples some persons who will say that you have done what I charge you with." Such an application could not, in accordance with any rules of justice, or any practice of the Court, be granted. He should now proceed to consider the statute on the law of libel, which, beneficially for the public, had been passed within these few years. One of the justifications under that statute for the publication of a libel was that it was true; another was, that it was published for the benefit of the public. This case showed how well that statute would work for the advancement of justice. The inquiry in this case was one of importance to the public,<sup>r</sup> for Dr. Achilli denounced the mischiefs of the Church of Rome, and Dr. Newman alleged that Dr. Achilli was not to be believed in his denunciations, for that Dr. Achilli himself had been guilty of all those acts of misconduct which he charged upon others. It was of importance that the public should know the truth in these matters, and that question of where the truth lay was capable of being made the subject of evidence by witnesses to be examined at the trial. If Dr. Newman found that trial coming on too suddenly<sup>s</sup> to enable him to produce these wit-

suggest themselves to be apparent on reference to the subsequent part of the case. But what had that to do with the question of the truth of the charges? If they were false, then whoever might swear to them mattered not.

<sup>p</sup> Here again, this indecent observation had of course nothing to do with the case; but the advocate is too prudent to have hazarded it if he had not known it would weigh with the Court.

<sup>q</sup> B. (*i.e.* Dr. Newman) does say he believed it.

<sup>r</sup> This is an important admission that the publication was for the public benefit; but then, by the Act, Dr. Newman also has to prove it true. This imposes a burden upon him, as the author believes, not imposed by common law; and most unjustly imposed upon him. For if the publication was for the public benefit, the occasion was lawful, and the publication privileged, in which case, as he contends (see Introduction), Dr. Newman would not have to prove the charges, but Achilli to disprove them, or prove them to be malicious.

<sup>s</sup> Alas! Dr. Newman found the trial come on too slowly for him—to his great

nesses, he might apply to the Court, and would get all proper benefit from the application at that time; but, as matters now stood, there was no ground for this application.

The *Attorney General*, in support of this rule for the enlargement of time, said that the arguments of his learned friends assumed that the present proceeding was the only one by which Dr. Achilli could clear his character. That was not so. If the rule for the criminal information should be discharged, Dr. Achilli might still have recourse to an indictment. This being an application to the court for its interposition to enable Dr. Newman to answer the rule which had been obtained against him, the court would (*i.e.* should) use its discretion in such a way as to be sure that justice should be done. The argument of Sir F. Thesiger amounted to this, that where the conduct of a party was impugned in relation to acts done without the realm, the man who impugned it should be prepared at once to sustain the imputations by evidence within the realm (!). Such an argument did seem strange, and the doctrine itself was incapable of practical application. He submitted that when the character of the party was assailed in respect of conduct out of the realm, the Court would (*i.e.* should) grant to the assailing party the proper opportunity of substantiating his charges. He submitted that the case of *M. Pacifico* was in point. It was true that he (the *Attorney General*), who then appeared for *M. Pacifico*, did make no resistance to the application, but that was because he felt that such an application was just and reasonable.

Lord CAMPBELL.—We were not called on to give judgment in that case.<sup>†</sup>

The *Attorney General* said that it was so no doubt, but in that case he knew that the truth would in no way be injurious to his client. The present application ought not to be resisted. His learned friend was mistaken in supposing that a commission might issue, for no commission to examine witnesses could issue in a criminal case.

Lord CAMPBELL.—But that is not objectionable. It would be much more satisfactory to have the witnesses examined in the box.<sup>‡</sup>

The *Attorney General* said it would be so, but that was not a reason why Dr. Newman should not be enabled to examine witnesses in this preliminary inquiry. Dr. Achilli had quitted the

cost and previous prejudice: and much benefit he got from application to the Court or the prosecutor to bring it on more quickly, as will be seen in the subsequent part of the case. The Court would not give him time when he wanted it, to procure evidence, nor prevent delay when it prevented him from retaining his evidence.—See his affidavits, *post*.

<sup>†</sup> What did that matter, if the counsel were right in deeming it fair and just (which the Court did not dispute); and if the case were in point as to the present, which the Court certainly did not disprove?

<sup>‡</sup> But suppose they could not be got to come over, as was the case with many, and as the Court must have known was very probable?

Roman Catholic Church, and he now came forward to denounce what he called the offences of the clergy of that Church. Dr. Newman alleged that he was not a credible witness on such a matter, and set forth certain acts of the life of Dr. Achilli to prove that allegation. Dr. Achilli called that a libel on him, and Dr. Newman said, "Give me time and I will get evidence to support my allegations; but I must have time to enable me to get that evidence." Surely he had a right to what he thus asked. If this rule should be discharged, Dr. Newman would have no means of doing what he required for his defence, and of resisting the issuing of this information.<sup>v</sup> It was impossible to say that the matter could be properly investigated, with any reasonable possibility of the defendant defending himself, unless he was allowed to obtain this evidence, to which he was undoubtedly entitled.

Mr. *Badeley*, on the same side, submitted with confidence that this rule must be made absolute, not only for the purposes of the ends of justice, and the protection of the person whose case was under the consideration of the Court, but for the benefit of the Court itself, the application now made ought to be granted. In cases of this sort, where a criminal information was applied for, the Court would act with the greatest hesitation and caution. In such a case the Court would require the man who came to ask for its protection, that he should come into court with clean hands, and should give the Court assurance that he was entirely innocent of the offence with which he was charged. Here additional evidence to that of Dr. Achilli himself was required to put the case fairly under the consideration of the Court. Dr. Achilli could not be injured by this application. He would still be at liberty to claim redress at the hands of a jury. The alleged libel here charged certain offences to have been committed in distant parts of the world. It was impossible that Dr. Newman should be expected to call together at once all the witnesses who were to support the charge. A person might come into court asking this extraordinary remedy, and it might turn out that if he were not so guilty as that he might be convicted by a jury, still he might be quite undeserving of that protection which he asked for. On the other hand, it might be abundantly reasonable, fair, and proper that he should have this protection, and that in the result it would turn out so; still, it would be satisfactory to the Court to know that it had granted to the defendant a fair and reasonable means of defending himself, such as in law he was entitled to, and such as in justice he ought to enjoy.

Lord CAMPBELL.—I am of opinion that this rule ought to be discharged. I by no means consider as inflexible the rule that if a man publishes a libel imputing to another the perpetration of some misconduct in a foreign country, the publisher of the libel is bound

<sup>v</sup> Nor, in reality, of defending himself at the trial.—See previous note.

instantly to be able to justify the truth of what he has alleged. With respect to the Pacifico case, I do not think that it is any precedent for the present ; in the first place, because what occurred was done by consent ; and, secondly, because if it had been resisted I should have been of opinion that, under the circumstances of that case, the defendant's was a fair application.<sup>w</sup> There the libel was published in a London journal, and consisted of a letter from the correspondent in Greece of that journal ; and it was stated in the affidavit that that correspondent was at that time living in Greece, and that the defendant had reason to believe that he would be able to justify the truth of the statements contained in his letter.<sup>x</sup> This is a very different case ; for here, the imputations being of the gravest and most serious kind, there is not the mention of one single witness on whose credit Dr. Newman has made the imputations, or from whom he says he expects to be able to justify what he has stated.<sup>y</sup> The affidavit, therefore, comes to this—that he may have made the statements upon common rumour, and, without saying that he has invented anything<sup>z</sup> (for I believe that he would be the last man in the world to do so),<sup>a</sup> he may on mere rumour have brought forward these charges without any reason whatever to believe that he had the means of proving them ;<sup>b</sup> and he now wishes to send out a commission, by which he may be enabled to find some persons who will make an affidavit in support of these charges. To allow that would, indeed, be to place a person whose character was assailed in a very disadvantageous position, and one in which he ought not in fairness to be placed ;<sup>c</sup> and I was much struck by the remark that Dr. Newman does not even now state his belief in any one of the charges which he has made. I am therefore of opinion, that, exercising the discretion which belongs to us, we ought not to grant this application. According to the law as it now exists, he will have the opportunity of vindicating the truth of the charges he has made ;

<sup>w</sup> Which disposes of the first reason, for, if just, the Court should grant it.

<sup>x</sup> How could he do so, on the rule of the issuing of the information, except by affidavit, made abroad ?

<sup>y</sup> As if that were of the slightest importance, when he swore positively that he believed he should be able to prove the charges !

<sup>z</sup> Then why have suggested so foul an insinuation ?

<sup>a</sup> How so, if "the last man in the world to do so ?" For what material difference in morality is there between bringing serious charges forward on mere rumour, or on mere invention ? And all this is thrown out by Lord Campbell with the full knowledge that these charges had been brought forward more than a year before, in one of the leading reviews, and repeatedly in other publications, without contradiction ; and it is actually admitted in Achilli's own affidavit, before the Court at this time, that these charges had been brought against him in 1850, and that it had been published in the *Record* that he had interfered with an inquiry instituted.

<sup>b</sup> Why not, if the affidavit were true ? Did Lord Campbell mean to insinuate the possibility that Dr. Newman wanted to get up affidavits, true or false ?

<sup>c</sup> He does state it, in the strongest way possible or proper ; he swears he believes them proveable.

and if he can show that he has acted upon a laudable motive in publishing them, he will establish a complete justification for what he has published.<sup>d</sup>

Mr. Justice PATTESON.—I am entirely of the same opinion. This case is distinguishable from that of *M. Pacifico* for the reasons already given by Lord Campbell. I do not recollect any instance in which this Court has enlarged a rule of this kind, in order that the defendant might send to a distance to discover evidence in support of his charges.<sup>e</sup> There is a case in which I was counsel for the defendant, where an application was made to the Court: the case against Dr. O'Meara, at the instance of Sir Hudson Lowe. Many affidavits were filed in that case, but there was not any opposition, and the rule was enlarged by consent.<sup>f</sup> There never has been any application of this sort granted by this Court.<sup>g</sup>

Mr. Justice COLERIDGE.—I am entirely of the same opinion. I have no wish to add any remarks to those already made on the affidavits, but I will say a single word. The Court does exercise a discretion in these matters, but it is not an arbitrary discretion, but is one which is exercised according to settled general rules,<sup>h</sup> such as from experience we find to be most conducive to the advancement of justice. There is no case where an application similar to this has been granted. The affidavit fairly lies open to the objection made to it, and, independently of any personal consideration, there is enough to show the extreme inconvenience which would result from granting the present application. It is new to me to hear that this Court requires, in cases of criminal informations, something additional to the declaration of the person who comes to seek our protection, denying in clear and express terms the imputation cast upon him.<sup>i</sup> I am unwilling to lend myself to the creation of any new precedent on facts such as are now laid before us, and I think that this rule ought to be discharged.

Mr. Justice WIGHTMAN.—I am of opinion that this rule should be discharged, on the ground that the affidavit on which it is moved

<sup>d</sup> It does not seem to have struck the chief justice that perhaps he might prove the occasion of publication to have been laudable, and yet fail to prove the charges true, which might, nevertheless, be true. The noble and learned lord thinks that case not worth contemplating or providing for!

<sup>e</sup> Which was not asked. The application was not for time to discover, but time to obtain, evidence: the evidence was sworn to exist.

<sup>f</sup> Just so; as in *Pacifico's* case, the application was so obviously reasonable and proper, that even the opposite side assented to it! And this is actually used as an argument for not acceding to a similar application!

<sup>g</sup> No such application had been granted by the Court, simply because so plainly just that the opposite party always assented, and the Court was never called upon to grant it.

<sup>h</sup> What rules are there? It has been already shown that the application was obviously essential to the advancement of justice.

<sup>i</sup> See the above note. Because it is "new" to hear of any application being ever made in an affidavit disclosing that those charges had been made long ago, and not disclosing any notice taken of them at that time.



is substantially defective. I was particularly struck by the argument upon it, that it does not anywhere appear in the affidavit that Dr. Newman believed the charge in fact and in truth, nor that he has any evidence to substantiate the statement, but he thinks that if time is given he may obtain such evidence. This is not enough.<sup>j</sup>  
 Rule for time discharged.

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### PLEADINGS.

“*In the Queen’s Bench, Michaelmas Term, 15th Vict. 1851, Middlesex.*—Be it remembered, that C. F. Robinson, Esquire, coroner, and attorney of our Lady the Queen in the Court of Queen’s Bench, who prosecutes for our said Lady the Queen in this behalf, comes here into the said court at Westminster, the 21st day of November, in the 15th year of the reign of our said Lady, and gives the court to understand and be informed, that John Henry Newman, Doctor of Divinity, late of the parish of Aston, in the county of Warwick, contriving and wickedly and maliciously intending to injure and vilify one Giovanni Giacinto Achilli, and to bring him into great contempt, scandal, infamy, and disgrace, on the 1st of October, 1851, did falsely and maliciously compose and publish a certain false, scandalous, malicious, and defamatory libel, containing divers false, scandalous, malicious, and defamatory matters concerning the said G. G. Achilli, that is to say:—

The information set out the libel *verbatim*, with the usual inuendoes. The libel was as follows:—

“And in the midst of outrages such as these, my Brothers of the Oratory, wiping its mouth and clasping its hands, and turning up its eyes, it trudges to the Town Hall to hear Dr. Achilli expose the Inquisition. Ah! Dr. Achilli,—I might have spoken of him last week, had time admitted of it. The Protestant world flocks to hear him, because he has something to tell of the Catholic Church. He has something to tell, it is true; he *has* a scandal to reveal, he *has* an argument to exhibit. It is a simple one, and a powerful one, as far as it goes—and it is *one*. That one argument is himself; it is his presence which is the triumph of Protestants; it is the sight of him which is a Catholic’s confusion. It is indeed our confusion, that our Holy Mother could have had a priest like him. He feels the force of the argument, and he shows himself to the multitude that is gazing on him. ‘Mothers of families,’ he seems to say, ‘gentle maidens, innocent children, look at me, for I am worth looking at. You do not see such a sight every day. Can any Church live over the imputation of such a production as I am? I have been a Roman priest and a hypocrite; I have been a profligate under a cowl. I am that Father Achilli, who, as early as 1826, was deprived of my faculty to lecture, for an offence which my superiors did their best to conceal; and who in 1827 had already earned the reputation of a scandalous friar. I am that Achilli, who in the diocese of Viterbo, in February, 1831, robbed of her honour a young woman of eighteen; who in September, 1833, was found guilty of a second such crime, in the case of a person of twenty-eight; and who perpetrated a third in July, 1834, in the case of another aged twenty-four. I am he,

<sup>j</sup> What more could he say, than that he believed the charges proveable?

who afterwards was found guilty of sins, similar or worse, in other towns of the neighbourhood. I am that son of St. Dominic who is known to have repeated the offence at Capua, in 1834 and 1835, and at Naples again in 1840, in the case of a child of fifteen. I am he who chose the sacristy of the church for one of these crimes, and Good Friday for another. Look on me, ye mothers of England, a confessor against Popery, for ye "ne'er may look upon my like again." I am that veritable priest who, after all this, began to speak against, not only the Catholic faith, but the moral law, and perverted others by my teaching. I am the Cavaliere Achilli who then went to Corfu, made the wife of a tailor faithless to her husband, and lived publicly and travelled about with the wife of a chorus-singer. I am that Professor in the Protestant College at Malta, who with two others was dismissed from my post for offences which the authorities could not get themselves to describe. And now attend to me, such as I am, and you shall see what you shall see about the barbarity and profligacy of the inquisitors of Rome.' You speak truly, O Achilli, and we cannot answer you a word. You are a priest; you have been a friar; you are, it is undeniable, the scandal of Catholicism, and the palmary argument of Protestants, by your extraordinary depravity. You have been, it is true, a profligate, an unbeliever, and a hypocrite. Not many years passed of your conventual life, and you were never in choir, always in private houses, so that the laity observed you. You were deprived of your professorship, we own it; you were prohibited from preaching and hearing confessions; you were obliged to give hush-money to the father of one of your victims, as we learn from the official report of the police of Viterbo. You are reported in an official document of the Neapolitan police to be 'known for habitual incontinency;' your name came before the civil tribunal at Corfu for your crime of adultery. You have put the crown on your offences by, as long as you could, denying them all; you have professed to seek after truth, when you were ravening after sin. Yes, you are an incontrovertible proof that priests may fall and friars break their vows. You are your own witness; but while you need not go out of yourself for your argument, neither are you able. With you the argument begins; with you, too, it ends: the beginning and the ending you are both. When you have shown yourself, you have done your worst and your all; you are your best argument and your sole. Your witness against others is utterly invalidated by your witness against yourself. You leave your sting in the wound; you cannot lay the golden eggs, for you are already dead."

Which said false, scandalous, malicious, and defamatory libel the said J. H. Newman did then publish, to the great damage, scandal, and disgrace of the said G. G. Achilli, in contempt of our said Lady the Queen, and believes to the evil and pernicious example of all others in the like case offending, against the peace of our said Lady the Queen, her crown and dignity. Whereupon the said coroner and attorney of our said Lady the Queen, who for our said Lady the Queen in this behalf prosecuteth, prayeth the consideration of the Court here in the premises, and that due process of law may be awarded against the said J. H. Newman in this behalf, to make him answer to our said Lady the Queen touching and concerning the premises aforesaid."

"*In the Queen's Bench, Michaelmas Term, 15th Vict. 1851.*<sup>k</sup>—*The Queen v. J. H. Newman.*—And the said J. H. Newman appears here in

<sup>k</sup> These pleas were filed 30th December, 1851. As first delivered, they were

court, by Henry Lewin his attorney, and the said information is read to him, which being by him heard and understood, he complains to have been grievously vexed and molested under colour of the premises, and the less justly because he saith that he is not guilty of the said supposed offences in the said information alleged, &c.

“And for a further plea the said J. H. Newman saith,

“1. That before the composing and publishing of the said alleged libel, to wit, on the 1st of January, 1830, &c., the said G. G. Achilli was an infidel, to wit at Westminster, in the county of Middlesex.

“2. That the said G. G. Achilli was and exercised the functions of a priest of the Church of Rome at Viterbo, Capua, Naples, and elsewhere, and whilst such priest, &c., he secretly abandoned and disbelieved the peculiar doctrines of the Church of Rome, to wit, &c. ; and though outwardly professing chastity and purity of life, he committed the several acts of fornication, adultery, and impurity hereinafter mentioned, and by reason thereof was a hypocrite.

“3. That the said G. G. Achilli was a profligate under a cowl, in that, being a member of the order of St. Dominic or Friars Preachers, and bound by vows of chastity, poverty, and obedience, he committed the several acts of fornication and impurity hereinafter mentioned.

“4. That the said G. G. Achilli had a faculty to lecture at Viterbo, of which faculty, as early as 1826, he was, for certain misconduct, deprived by the superior of the order, one F. Velzi, but which misconduct was concealed and suppressed by the said superior, and is to the said J. H. Newman unknown.

“5. That the said G. G. Achilli, in 1826, was a friar of the order of St. Dominic, in the convent of Gradi, at Viterbo, and, contrary to his duty as such friar, neglected to attend divine service in the choir, and, without the permission of his superior, had frequent intercourse with persons not belonging to the said order, and so in 1827 had already earned the reputation of a scandalous friar.

“6. That the said G. G. Achilli, in February, 1831, at Viterbo, debauched, seduced, and carnally knew one Elena Valente, then being chaste and unmarried, and of the age of eighteen years, and then and there robbed her of her honour.

“7. That the said G. G. Achilli, at Viterbo, debauched, &c., one Rosa de Alessandris, then being chaste and unmarried, of the age of twenty-eight years, and robbed her of her honour, and on the 1st of September, 1833, at Viterbo, was found guilty thereof, upon due inquiry before the bishop of Viterbo.

“8. That the said G. G. Achilli, on the 1st of July, 1834, at Viterbo, debauched, &c., a certain other young woman of the age of twenty-four

demurred to, and had to be amended ; then they were demurred to again, and again amended. The technical and disgraceful character of these objections, and their obvious object to obstruct, protract, and delay the proceedings, will be appreciated from a specimen or two. The plea charged “acts of impurity” and “lewd conduct” were alleged ; and it was objected that it did not state “in what this impurity and lewdness consisted !” It also charged, that the prosecutor “spoke against the laws of morality, continence, and purity,” and it was objected, “what did he speak ?” Again, it charged “criminal intercourse with a female child,” and it was objected, “that it did not show she was chaste, or had any honour to lose !” And while time was consumed with these discreditable technicalities, witnesses were lost ; and thus defendant was driven to such strictness of statement as to make proof scarcely possible, and denial very safe.

years, whose name is to the said J. H. Newman unknown, and then and there robbed the said woman of her honour.

"9. That the said G. G. Achilli, at Viterbo and in the neighbourhood, committed sins, similar or worse, and debauched, &c., one Vincenza Guerra, then being chaste and unmarried; also another woman, then being chaste and unmarried, whose name is to the said J. H. Newman unknown; and that the said G. G. Achilli was afterwards at Rome, before the Court of the Holy Office, or Inquisition, found guilty of the said several offences.

"10. That the said G. G. Achilli, on the 1st of January, 1835, being a friar of the order of St. Dominic, at Capua, debauched, &c., a certain other woman, being chaste and unmarried, whose name is to the said J. H. Newman unknown.

"11. That the said G. G. Achilli, on the 1st of January, 1840, at Naples, debauched, &c., one Maria Giovanni Principe, a female child of fifteen years of age, &c.

"12. That the place where the said G. G. Achilli debauched the said Rosa de Alessandris was the sacristy of the church of Gradi, at Viterbo, and that the day on which he debauched the said female child at Naples, was Good Friday, in the year 1840.

"13. That the said G. G. Achilli, being a priest of the Church of Rome, at Rome, Capua, Naples, and Malta, spoke and taught against the truth of divers doctrines of the Catholic faith, to wit, &c.; and also against the laws of morality, to wit, the moral obligation of chastity and continence, and thereby did pervert one Luigi De Sanctis, one Fortunato Saccares, the said Rosa de Alessandris, the said Elena Valente, and the said Maria Giovanni Principe, from their belief in such doctrines and obedience to such laws.

"14. That on the 2nd of July, 1843, at Corfu, the said G. G. Achilli debauched and made faithless to her husband, one Marianna Crisaffi, the wife of one Nicolo Garamoni, a tailor; and afterwards, on the 1st of August, 1843, at Corfu, the said G. G. Achilli publicly cohabited and committed adultery with one Albina, the lawful wife of one Vincenzo Coriboni, a chorus singer, and publicly travelled about with her from Corfu to Zante.

"15. That on the 1st of May, 1843, and for twelve months preceding, the said G. G. Achilli held the office of professor of theology in a Protestant college, to wit, St. Julian's College, at Malta, and during that period hindered and frustrated an investigation then pending before Messrs. Hadfield and Brien, officers of the college, concerning charges of fornication and other gross immorality against one Fortunato Saccares, and one Pietro Leonini, in which charges the said G. G. Achilli was also implicated, by sending away the said Fortunato Saccares to Sicily; and thereupon the earl of Shaftesbury and others, the committee of the said college, dismissed the said G. G. Achilli from his said office of professor, and that the said G. G. Achilli was dismissed as well for hindering and frustrating the said investigation as for the said several acts of sin, fornication, and immorality hereinbefore mentioned, but which the said committee were then unwilling to, and have still forborne to state and describe, and cannot get themselves to describe specifically.

"16. That the said G. G. Achilli, in the years 1847, 1850, and 1851, being resident in London, did attempt to seduce and debauch one Harriet Harris, then being chaste and unmarried, and did conduct himself lewdly and indecently as well to the said Harriet Harris as to one

Jane Legg, one Sarah Wood, one Catherine Gorman, and one Mdlle. Fortay; and by reason thereof, and of the said several other matters hereinbefore set forth, the said G. G. Achilli was guilty of extraordinary depravity, and was and is the scandal of Catholicism.

“17. That the said G. G. Achilli was a profligate by the commission of the said acts of profligacy, and also had been and was an unbeliever and a hypocrite.

“18. That the said G. G. Achilli, at the convent of Gradi, at Viterbo, in the year 1836, continually absented himself from the choir of the chancel of the said convent during Divine service, and was a frequenter of private houses, contrary to the rules of the said order of St. Dominic, and had thereby given offence to divers lay persons, not members of the said order, whose names are to the said J. H. Newman unknown.

“19. That on the 16th day of June, 1841, at Rome, by the Court of the Holy Office, or Inquisition, the said G. G. Achilli was suspended from the celebration of mass and disabled from any cure of souls, and from preaching and hearing confessions, and from exercising the sacerdotal office.

“20. That, after the said G. G. Achilli had debauched the said Rosa de Alessandris, at Viterbo, of the age of 28 years, on the 1st of September, 1833, he was obliged to give the sum of 50 scudi (10*l.*) to the father of the said young woman as damages, and that by the official reports of the police at Viterbo, it is declared that the said G. G. Achilli had given the said money, as such hush-money, to the said father of the said young woman.

“21. That, on the 1st of January, 1839, in and by an official document or report of the officers of police at Naples, and being amongst the archives and documents of the said Neapolitan police, the said G. G. Achilli was reported and declared to be known for habitual incontinency at Naples.

“22. That after the said G. G. Achilli had debauched the said Marianna Crisaffi, the wife of the said Nicolo Garimoni, the tailor, on the 3rd of July, 1843, the name of the said G. G. Achilli came before the civil tribunal at Corfu in respect of the said crime of adultery; that is to say, that Nicolo Garimoni, by Antonio Capello, his advocate, presented a petition to the Court, praying that a petition presented by his said wife Marianna for alimony should be rejected, upon the ground that the said Marianna had been guilty of adultery with the said G. G. Achilli, and offered to prove the same by lawful witnesses.

“23. That the said G. G. Achilli, on the 1st of January, 1850, and on divers other days, though knowing himself to have been guilty of the several offences aforesaid, did deny them all; and that the said G. G. Achilli, when he committed the said offence, and thereby was, in fact, ravening after sin, did profess and pretend to be seeking after truth: and that by reason of the said offences the said G. G. Achilli was and is unworthy to be believed in respect of the charges by him made against the doctrines and discipline of the Church of Rome, and the persons professing the same. And so the said J. H. Newman says that the said alleged libel consists of allegations true in substance and in fact, and of fair and reasonable comments thereon.

“And the said J. H. Newman further saith, that at the time of publishing of the said alleged libel, it was for the public benefit that the matters therein contained should be published, because he says that great excitement prevailed, and numerous public discussions had been

held in divers places in England, on divers matters of controversy between the Churches of England and Rome, with respect to which it was important the truth should be known ; and inasmuch as the said G. G. Achilli took a prominent part in such discussions, and his opinion and testimony were by many persons appealed to and relied on as of a person of character and respectability, with reference to the matter in controversy, it was necessary for the purpose of more effectually examining and ascertaining the truth, that the matters in the said alleged libel should be published and known, in order that it might more fully appear that the opinion and testimony of the said G. G. Achilli were not deserving of credit or consideration, by reason of his previous misconduct ; and also because the said G. G. Achilli had been and was, at Birmingham, Leamington, Brighton, Bath, Cambridge, Huntingdon, Winchester, and elsewhere, endeavouring by preaching and lecturing to excite discord and animosity towards her Majesty's Roman Catholic subjects, and against the religion and practice of persons professing the Roman Catholic religion, against the peace of our said lady the Queen ; and it was of importance and conducive to the diminishing of such discord and animosity, and to preserve the peace of our said lady the Queen, that the said matters should be published and known to all the liege subjects of our said lady the Queen ; and also because the said G. G. Achilli had improperly pretended to such subjects that he was a person innocent of the said crimes and misconduct, and that he was greatly injured by the said foreign ecclesiastical tribunals, and that he had been persecuted and oppressed by the Roman Catholic Church and by the bishops and authorities thereof, on account of his religious opinions, and that he was a martyr, on account of his religious opinions ; and by means of such improper pretences was endeavouring, and was likely to obtain credit and support from such subjects, by reason of their being ignorant of the said misconduct of the said G. G. Achilli, it then became, and was of public importance, and for the public benefit, to expose the impropriety and want of truth of such pretences, and to prevent the said subjects being deceived and misled by such pretences, and to have the real character of the said G. G. Achilli, and his conduct, made known to such subjects and the public in general. And also because many benevolent persons and the public generally were at that time disposed to show kindness and give assistance to the said G. G. Achilli, on the ground of his having been harshly and unjustly treated by the said Court of the Holy Office, or Inquisition, and by the said superior of the said order of St. Dominic, and on the ground that he was a person deserving of kindness and assistance ; and it was for the benefit of the public that the said matters should be published, for the purpose of showing that the said G. G. Achilli had been treated fairly and properly, and according to his deserts, by the said court and the said superior ; and that the said G. G. Achilli is a person wholly undeserving of kindness and assistance, and because the said G. G. Achilli had obtained and was likely again to obtain preferment and employment of public trust and confidence, which he was unfit to obtain by reason of the said matters, and which he had obtained and was likely to obtain, only by reason of the said matters being unknown, and unpublished. And so the said J. H. Newman says he published the said alleged libel, as he lawfully might, for the causes aforesaid ; and this the said J. H. Newman is ready to verify. Wherefore, he prays judgment, &c."

(Signed) "EDWARD BADELEY."

“*Hilary Term, 16th Victoria, 1852.*—The said C. F. Robinson, Esquire, coroner and attorney, &c., as to the plea first pleaded, puts himself upon the country ; and. as to the plea secondly pleaded, saith, that the said J. H. Newman, of his own wrong, and without the cause in his said plea alleged, composed and published the said libel, as in the said information alleged, &c.”

“*Hilary Term, 16th Vict. 1852.*—And the said J. H. Newman, as to the replication of the said F. Robinson, puts himself upon the country, &c.<sup>1</sup>

### COURT OF QUEEN'S BENCH—APRIL 21, 1852.

Sir *A. Cockburn* (with whom was Mr. *Badeley*) moved that the case be appointed for an early trial, the sittings after this term. He moved on five affidavits. First, there was the affidavit of Dr. Newman, setting forth all the previous proceedings and the history of the pleadings. It stated

“That on the 16th of January a demurrer on the part of the prosecutor was filed to the special plea of the defendant. That he caused application to be made to the prosecutor's attorneys, to know what their objections were to the plea, and they declined to give such information ; and thereupon he was compelled to amend his plea in the best way he could, without knowing the particulars of the objections, as he was most desirous to remove all technical objections, and to go into the merits of the said alleged libels. That the prosecutors again objected to the plea, and thereupon he caused application to be made to the prosecutor's attorneys for the particulars of their objections, with which they complied, and thereupon he caused his plea to be amended, to meet the objections, though he was advised by counsel, and fully believed that his pleas, as first settled, were sufficient in law and fact ; and if the same contained any informalities it was through accident, and not with any view of delay on the part of defendant or his advisers. That the objections taken to the plea, and the legal form thereof, occasioned such delay that the pleas, as last amended, were not filed until the 9th February, 1852. That fully believing that the trial would come on on or about the 16th February, he had caused his witnesses to be requested to come to this country ready for the trial ; and he had not time afterwards to write to them to prevent their coming into this country by that time ; and if he had not sent for them forthwith to come by that time, the prosecutor might<sup>m</sup> have joined issue (without a demurrer), and the trial would have taken place at the sittings after Hilary term ; but the defendant would have been left without his witnesses, and deprived of the just defence which their testimony could afford to him. That it was absolutely necessary that his witnesses should come to England for his defence. That five of them arrived in London from Corfu about the 16th February, and two of them from Malta on the 6th, and two of them (females) arrived in Paris, one about the 13th January and the other about the 1st February ; one of them bringing with her a child in arms, and leaving a child at

<sup>1</sup> *I. e.* the parties joined issue. This was on February 26th ; it might have been in December but for the discreditable demurrers already alluded to.

<sup>m</sup> And undoubtedly *would*.

home five or six years old; and she refused to leave her home without her husband. That the defendant has been put to a very great and serious expense in the necessary support of the said witnesses, from the time of their leaving home down to the present time.<sup>n</sup> That the female witnesses in Paris are very desirous and urgent to return again to their own homes, and that several of the witnesses are said to have threatened to return to their own homes, without waiting for the trial, and that one of the English witnesses has requested to be permitted, and threatened to go to America before the trial of the cause; but this defendant cannot comply with these desires or requests, as he is advised and believes that their testimony is absolutely necessary for his just defence.<sup>o</sup> That he was desirous to try the cause at the spring assizes for Surrey, about 22nd March, for which there was sufficient time; and he caused application to be made to the prosecutor's attorneys for their consent to such a trial, but they declined to accede to it. That he is informed that several of his witnesses are suffering serious losses by reason of the delay in the trial of the cause, and that these losses will be much increased if the delay is continued; and that some of the witnesses have threatened to return home. That he believes they will leave the country unless the cause is speedily heard, and thereby the defendant will be deprived of his just defence to the prosecution.<sup>o</sup>

Guisepe Montanori, of Corfu, but now staying at Church-street, Greek-street, Soho, made oath and said, that he arrived in London the 16th February, that he was staying there solely for the purpose of giving his evidence in the cause, and at great inconvenience and loss in his trade, a house-painter.

Antonio Russo, of Corfu, staying at, &c., made a similar affidavit, stating that he was a journeyman carpenter, and his master had now engaged another man in his place, in consequence of his having been detained in England.

Niccolo Garramoni, of Corfu, tailor, made a similar affidavit.

On the 14th April, Mr. Lewin wrote to prosecutor's attorneys, asking consent to early trial, "to prevent the heavy expense of witnesses being continued," having previously, in February, proposed to try at the Surrey Spring Assizes, an offer which was refused. Lord Campbell declined to take the case, unless an understanding could be come to that it would only last two days, which of course was utterly impossible, and no arrangement for a trial could be made in Easter Term. So the cause stood over until the "sittings after Trinity Term," which commenced in June, after a delay of not less than four months from the time at which the cause could have been tried, and would have been, but for the conduct of the prosecutor's attorneys, and the delay they produced.

<sup>n</sup> During this interval, Dr. Newman's attorney had to write to the prosecutor's, complaining of attempts to tamper with the witnesses.

<sup>o</sup> It is requisite to give the address of a person making affidavit; and this the prosecutor's attorneys well knew, of course; and Achilli was thus able to find the defendant's witnesses out, and had opportunities of speaking with them. Mr. Lewin, the defendant's attorney, made a similar affidavit.



# REPORT OF THE TRIAL.

COURT OF QUEEN'S BENCH—JUNE 21, 1852.

(*Sittings at Westminster, before Lord Campbell and a Special Jury.*)

THE QUEEN ON THE PROSECUTION OF GIACINTO ACHILLI  
V. DR. JOHN HENRY NEWMAN.

The *Attorney General*, the *Solicitor General*, and Mr. *T. F. Ellis* appeared for the prosecution; and Sir *A. E. Cockburn*, Mr. *Serjeant Wilkins*, Mr. *Bramwell*, Mr. *Joseph Addison*, and Mr. *Badeley* for the defence. Some of the special jury summoned did not answer to their names, and the parties prayed a *tales de circumstantibus*.<sup>p</sup>

Mr. *Ellis* opened the pleadings. This was a criminal information filed by her Majesty's coroner against John Henry Newman, charging him with the publication of a libel upon Giacinto Achilli, to which the defendant had for a first plea pleaded not guilty, on which issue was joined; secondly, he had pleaded specially, setting forth certain allegations of fact and conclusions, to the effect that the allegations in the libel were true in substance and in fact, and that the publication of them was for the public advantage.<sup>q</sup> To these pleas the prosecutor replied that the defendant had made the publication of his own wrong, and without the excuses alleged by him in the pleas, and on this replication the defendant had taken issue.

The *Attorney General* (Sir *F. Thesiger*) then addressed the jury for the prosecution. He said,—This is a criminal information, which has been filed against Dr. Newman for a libel contained in a pamphlet which was published in the month of October last year (one of a series), entitled “Lectures on the present Position of Catholics in England, addressed to the Brothers of the Little Oratory.” The prosecutor, Dr. Achilli, is an Italian by birth, and formerly was a monk of the Dominican order, and a priest of the Roman Catholic Church. He has since embraced the doctrines of

<sup>p</sup> *I.e.* were willing to fill up the number with such of the bystanders as were common jurors. Why were not the special jurors called on their fines?

<sup>q</sup> Under Lord Campbell's Act.—See Introduction and notes, *ante*, p. 14.

the Protestant faith, and is now a preacher of the Gospel at the Italian Protestant Chapel, in the neighbourhood of Golden-square. The defendant, Dr. Newman, as most of you probably well know, was formerly a clergyman of the Established Church, and was a distinguished graduate of the University of Oxford; he has since been converted to the Roman Catholic faith, of which he is now, if not one of the most able, certainly one of the most zealous defenders. Dr. Achilli, the prosecutor, before the year 1850, had paid occasional visits to this country, but at the commencement of that year, having recently escaped from the prisons of the Inquisition at Rome,<sup>s</sup> in which he had been confined for six months, he arrived in this country, and has been resident here ever since. He is a person of considerable talent, of great self-reliance, and of indomitable energy. He appears to possess a strong and determined will, and a spirit of independence which makes him occasionally unwilling to submit to authority. Such a person having revelations to make respecting the dungeons of the Inquisition, in which he has been twice incarcerated, and also respecting the errors of that faith which he has relinquished, and respecting the conduct of its professors, was likely to be gladly listened to.<sup>t</sup> He attended various public meetings, in which the statements he made excited a great deal of interest, and, being published, were read with great avidity. It was, of course, under these circumstances, evident to the members of that Church which he had quitted, that he was a most formidable adversary, and one who was by no means to be despised; and they seemed to have considered that it was an important object that they should disable his authority, impeach his veracity, and destroy his credit; and no person appears to have addressed himself to the attainment of these purposes with more zeal, if with more ability, than Dr. Newman. He was aware of the temper of the English people; he knew that nothing was more likely to scandalize them than the notion of any impropriety committed by any person clothed with a sacred character; and he, therefore, very industriously raked together all the scandals which the malice of the enemies of Dr. Achilli had disseminated; and he gave an account of them in his lectures, and published them in the pamphlet which was the subject of this prosecution.<sup>u</sup> He was engaged, in 1851, in delivering a series of lectures to the brothers of the Oratory, and the pamphlet which is now under consideration forms the fifth of those lectures, and is entitled "On the Logical Inconsistencies of the Protestant Faith." He undertook in this lecture to perform what he no doubt

<sup>s</sup> This was meant for, and made the main and the master-point of prejudice in the case; that the prosecutor was a victim of the Inquisition!

<sup>t</sup> Most true; eagerly listened, without the least desire to discover the truth.

<sup>u</sup> The most simple and most severe comment on this passage is the observation of Sir A. Cockburn, that Sir Frederick could not be so ill instructed as not to know that these charges had all been published in the *Dublin Review* of July, 1850!

considered an act of duty to the faith he had newly embraced—namely, to destroy the character of Dr. Achilli. In page 195 he introduces the subject in this way:—"Oh! the one-sided intellect of Protestantism!" (He reads the libel.)

In Michaelmas term last the Court granted leave to file a criminal information against the Messrs. Burns and Lambert for the libel as published by them. Subsequently, Dr. Newman admitted that he was the author of the libel, and his name, by the leave of the Court, was substituted for that of the Messrs. Burns and Lambert.

If Dr. Newman had contented himself with general charges of immorality and profligacy on the part of Dr. Achilli, there would have been no reason for him to take the slightest step to vindicate his character against such vague and general imputations, for of course they would be ascribed to that hostility which Dr. Newman would entertain towards Dr. Achilli, and he could have afforded to pass them over with silence and contempt. But it was perfectly impossible for him so to deal with charges of this description—charges specific and minute in their character—containing, if not in all instances the names of the persons referred to, at least such descriptions of them as pointed out clearly and distinctly who they were, together with minutæ of details as to places and times,—it is quite clear that if Dr. Achilli had taken no notice of them, if he had not called on the accuser to support his accusation, and to justify the statements he had made, the world would fairly and justly have believed that the charges were true, and that it was out of the power of Dr. Achilli to controvert, or even to deny them.<sup>v</sup> Dr. Achilli, therefore, felt bound to appeal to the law for the vindication of his character against these foul slanders, and to call on his accuser in a court of law, if he can, to make good these charges against him. Dr. Achilli applied to the Court of Queen's Bench to be allowed to file a criminal information against Dr. Newman. Before he could obtain the sanction of the Court to file that information, it was absolutely necessary that he should give a distinct and specific denial to the different charges which were alleged against him. He did so; the information was granted, and Dr. Newman has now, as you have heard, pleaded to the information. Now, until lately, a great anomaly prevailed in the law on the subject of proceedings for libel. If a person who alleged that he was injured by a libellous publication brought an action, it was competent to the person against whom the action was brought to plead, by way of justification, that the statements in the libel were true; and if he succeeded in establishing the truth, the party failed in his action. But if an indictment or criminal information were brought for the very same libel, it was not open to the party accused to plead

<sup>v</sup> Then this inference, of course, is to be drawn from the fact that he allowed all the charges to be published in 1850, in the *Dublin Review*, with far more minuteness and detail, without taking any steps to vindicate his character.

the truth,<sup>w</sup> because such proceedings being on the ground of the possibility of the publication leading to a breach of the peace;<sup>x</sup> it was obvious that this consequence would result whether the statements were true or false, which led to the ordinary expression, "the greater the truth the greater the libel." This anomaly and absurdity in the law was removed by the noble and learned lord, who now presides, and who some years ago introduced to the legislature the Act by which, in cases of this kind, the party accused is enabled to plead the truth of the allegations contained in the libel, and adding to it that the publication was for the public benefit. Dr. Newman has availed himself of this privilege, and has, in his pleas, comprising twenty-three distinct charges, expanded the statements in the libel, and introducing the details which are necessary with respect to the particulars of the different charges; and he has undertaken to prove the truth of these statements so contained in his pleas.<sup>y</sup> I need not say (since I have read the libel) that as the pleas follow its statements, they involve a series of charges of the most serious kind against the moral conduct and character of Dr. Achilli, the earliest period referred to being 1826; so that for twenty-six years we are called upon to enter into an investigation of his life, and conduct, and character. He is charged as early as 1831 with having seduced several women, some of whom are named in the plea and others are said to be unknown; he is accused of improper intercourse with other women, and with adultery with two of them; he is stated to have been removed from his professorship in the Malta Protestant college in consequence of endeavouring to stifle accusations of incontinence against others, and in which he was himself implicated. Finally, he is charged with the seduction of several females in this country, in the years 1849, 1850, and 1851; and all this is summed up with the statement which Dr. Newman puts forth against him as to his habitual incontinence. I have felt some degree of embarrassment, gentlemen, as to what was the course I ought properly to pursue in this most anxious investigation. Under ordinary circumstances I should anticipate the charge contained in the plea, and call the evidence in my power for the purpose of rebutting it, but it appears to me and to my learned friends whose assistance I have, that it would be impossible for us, under the extraordinary circumstances in which this case is presented to you, properly to adopt that

<sup>w</sup> An information, however, could not be granted at all upon applicant's affidavits; it did not clearly appear that he denied the charges; or if on the affidavits of the defendant it appeared that they were true or stale. See Introduction, *ante*, p. 12.

<sup>x</sup> This is a rather narrow reason; not to be found in the older cases; at least, with reference to criminal information; the object of which, undoubtedly, is the vindication of character.

<sup>y</sup> In a few moments Sir Frederick was complaining that his client did not know what charges he had to meet! This plea was filed nearly five months before the trial! and it only embodied the article in the *Dublin Review*, published two years before!

course on the present occasion. I need not say to you that from the position of the parties, if the charges were true, that much greater facility would be afforded to Dr. Newman to obtain evidence in Italy to support them than would be afforded to Dr. Achilli to rebut them; and that if they were untrue, Dr. Newman would have much better means put in his power to bring forward witnesses than would be allowed to Dr. Achilli.<sup>2</sup> We are here in utter uncertainty as to the mode in which Dr. Newman proposes to establish the truth of these charges.<sup>a</sup> We are aware that there are some witnesses here for the purpose of giving their evidence; and we are in some small degree prepared to meet them and rebut their testimony; but we are utterly at a loss to know how most of these charges will be attempted to be proved, and therefore it is absolutely necessary for us to wait until the evidence on the part of Dr. Newman shall have been given, when we shall be enabled to meet that evidence by calling the witnesses before you whom we can bring forward, and giving you all the testimony in our power to enable you to judge as to the credibility of the evidence adduced by the defendant. I pledge myself to call Dr. Achilli before you at the proper time,<sup>b</sup> and to submit him to the searching examination of my learned friend. As to him, the question is of course one of the deepest anxiety and interest. He is arraigned before you on his trial to answer these charges, directed against him for his supposed conduct during no less than twenty-six years of his previous existence. He calmly—and I believe I may add, fearlessly—awaits the result of this investigation. He is perfectly aware of all the difficulties with which he is surrounded; he knows that nothing but the most patient and careful attention will enable you to ascertain what degree of credit is due to the witnesses who will be called; but he is satisfied, though he is a foreigner—I had almost said because he is a foreigner—that that fairness and that impartiality which invariably distinguish British jurymen will be exhibited on

<sup>2</sup> This could imply nothing less than an insinuation that Dr. Newman might easily find in the Catholic Church a conspiracy to get up false evidence: the very insinuation conveyed with such extreme delicacy and charity by the Lord Chief Justice of England on the argument of the rule. Otherwise it is impossible not to see that both parties were on an equality, trying the case in this country, each having to procure his evidence abroad, with this great advantage on the side of the prosecutor, that he could offer his own evidence.

<sup>a</sup> This really was too bad. The reader, on referring to the plea, will perceive all the charges set forth with perfect particularity of time, place, and person. The prosecutor, by special demurrer, drove the defendant to this particularity in pleading; and (as will be observed in the course of the case) restricted him rigidly within those limits in respect to proof.

<sup>b</sup> There was (as will be seen) a little mental reserve here as to the phrase "proper time," which in the case of a criminal information, the object of which are to vindicate the character of the prosecutor, usually is taken to mean the earliest possible time, in the opening of the case, whereas Achilli's counsel would not produce him for examination until the defendant had first been put to prove all his charges by other evidence, which of course he ought not to be able to do, though the charges were perfectly true.

the present occasion, and that you will join with those who are now intrusted with his vital interests in the endeavour to arrive at the truth in this inquiry, because by the truth, to which he is ready to commit himself, he must stand or fall in this his day of trial.

The *Solicitor General* (Sir F. Kelly) then called the first witness, when Mr. *Serjeant Wilkins* (Sir A. Cockburn having left the court for a few moments<sup>c</sup>) moved that the witnesses on both sides be ordered out of court. The *Attorney General* asked if this was intended to apply equally to Dr. Achilli (who sat under his counsel). Mr. *Serjeant Wilkins*. Most assuredly. (The prosecutor appeared reluctant to leave.) The *Attorney General* looked wistfully at the Chief Justice, who said, with emphasis, "If you insist on it, brother Wilkins, of course it must be so."<sup>d</sup> The *Attorney General*, encouraged by the tone of the Chief Justice, ventured to urge that the exclusion of the prosecutor, because he happened also to be a witness, would be inconvenient, as preventing personal communication with his counsel in the progress of the case. The LORD CHIEF JUSTICE said,—If the counsel for the defendant insists on it it must be so. Mr. *Serjeant Wilkins*. My lord, we feel it our duty to press it. The LORD CHIEF JUSTICE. Then Dr. Achilli must leave the court. He did so accordingly. Immediately one of the jury (a man of colour) rose and said with some warmth, that it seemed hard upon Dr. Achilli to exclude him, as he could not know what charges were brought against him. The LORD CHIEF JUSTICE said,—Gentlemen, as prosecutor of course he has a right to be in court, but as it is proposed to examine him also as a witness, and as all witnesses are ordered out of court, if the other side insist, I am bound to include him in the order.<sup>e</sup>

<sup>c</sup> This seems the fitting opportunity for mentioning, that as leading counsel are usually engaged in cases going on simultaneously in two courts, one or other of the leaders in a case have continually to be absent from one court to attend in another, as in this instance, and continually throughout the case; but Sir F. Thesiger on one side, and Sir A. Cockburn on the other, attended for the most part entirely to this case.

<sup>d</sup> Was this quite fair? The effect was to throw the odium of excluding Achilli on Dr. Newman's counsel, instead of which, it ought to have been avowed as the act of the Court, and as in accordance with the invariable practice in trials like these. A slight thing serves to prejudice a jury, especially in such a case.

<sup>e</sup> This is an ordinary, I believe invariable, application in cases in which there is to be a conflict of evidence, and the reason is obvious: the impossibility of testing the opposing testimony if the witnesses hear each other's evidence. The value of the practice, which really is all but a rule, is illustrated in the story of "Susanna and the Elders," and the instances are innumerable of life and character rescued from false witnesses by this simple yet effective expedient. Let the reader refer to the evidence of one witness for Achilli, the woman Garamoni, given while he was in court, but not while he was examined, and then they will the better understand the effect of his being in court while all the witnesses were examined, and before he was examined himself. As it is, however, he had the advantage of reading all the evidence given on the first two days, before he gave his own; which obviously is a most material consideration in estimating its value.

The *Solicitor General* then adduced formal evidence of the publication of the libel, and the admission of Dr. Newman's authorship.

The libel was then taken as read, and the case for the prosecution closed.<sup>f</sup>

Sir *A. Cockburn* then addressed the jury as follows:—In rising to address you, gentlemen, on behalf of the defendant, it would be in vain to disguise that I feel that the task is calculated to inspire me with considerable apprehension. When I consider that this is a question involving religious considerations, it requires no more to make me unusually alive to the difficulties I shall have to encounter in procuring, even from gentlemen of your intelligence and honour, for my client that fair, impartial, and dispassionate hearing which is absolutely essential to the administration of justice in such a case. Gentlemen, I have not performed my part in the administration of justice for so many years without having become painfully impressed with the consciousness that even under the excellent system in which justice is administered, and the admirable and invaluable institutions which happily prevail in this country, and which are our boast and honour throughout the world, how difficult it is where questions of class-interest, or political, or still more, religious feelings are involved,—for even those who come to the administration of justice with the noblest and loftiest sentiments to protect themselves against that bias which such feelings are so naturally calculated to engender, and which will steal over our hearts, and occasionally pervert our understandings, without our being in the slightest degree conscious or sensible of the mischievous influences they exercise over our minds. And, gentlemen, in what case—if such unhappily be the frailty of human nature, that if even the best of us are open to these influences—in what case could there be more reason to apprehend its effects than in the present. It has been unhappily reserved for our days, that after a long period of repose and quiet, the flame of religious controversy should once more be kindled. Woe to our times that such should be the case; but unhappily it is so, and we must deal with these facts and circumstances as things over which we have no control. We have before us on the present occasion two great champions of these contending Churches. And now I ask any man to commune with his own heart, and to ask himself this question,—Are we not all prone to look on those whose religious opinions agree with our own, and who are the champions of our faith, with a partial eye, and to look with suspicion and distrust upon those with whom we disagree? In this case we have two converts, each from the faith of the other. Let any man ask himself how he looks on the secessions from the Church to which he belongs, or those who become converts to it. Is a convert made from the Roman Catholic to the Protestant Church—we look upon him as a man who has

<sup>f</sup> At half-past ten. The plaintiff's whole case having only occupied three-quarters of an hour.

yielded to the force of reason and the light of truth, and who has adopted his new faith from sincere conviction. We entertain no doubts of his truthfulness. If any suspicions are cast upon his motives, our hearts, our passions rise immediately in his favour. We are disposed to look with favour on all he has done, and if his motives are called in question, we become at once the advocates of his cause. On the other hand, take the man who has become a seceder from our faith, and a convert to Catholicism, on him are we not prone to look with distrust? and are not his motives called in question? and are we not ready to call him an apostate? We look on him with a prejudiced and partial judgment, viewing his conduct as that of a man who has abandoned his faith—the faith to which we are attached, and we are inclined to ascribe his secession to some of the baser motives which actuate men's minds. Gentlemen, here we have the very case before us. Two converts, or, if you please, two apostates, are before you. Two men who have each abandoned the faith in which they were respectively brought up, and who have been converted to the opposite faith; each has become the champion of the cause to which he has recently passed over, and between them there is this issue and this contest; and on the part of one of them, a Catholic, I have to address a jury composed, perhaps exclusively, of Protestants. Do not believe, gentlemen, that I entertain the slightest distrust of you, or doubt that you have entered that box with the full determination faithfully to discharge the duty which before God and man you have sworn to discharge. But, if there be anything which inspires me with apprehension in this case, it is the distrust I feel as to the possibility of men placed under such circumstances discharging their duty without being subject to those influences which are so apt to dominate unconsciously over us; and if I make these observations, it is only to justify what I am about to do—to call on you, in the name of all that is sacred, to guard yourselves against the possibility of prejudice or passion interfering with the discharge of your duties—duties which require for their proper discharge calm, unbiassed, unprejudiced, and dispassionate minds. Let us now consider in what position Dr. Newman, the defendant, stands. It is clear that in attacking (and I admit that he has attacked the character of Dr. Achilli, in such a manner that he must justify that attack if he can, for so to attack a man without having the means of making good that justification, is, I admit, matter of most serious offence)—it is clear, I say, that the defendant has made these charges from no private or personal motive; that he had no private pique to gratify, no private spite to indulge, no vindictive feeling to satisfy against Dr. Achilli. Why then attack him, will be asked: and I may be allowed to ask why has he attacked Dr. Achilli? the Attorney General has suggested to us an answer to that question. He says that Dr. Achilli came forward as a man who knew and could reveal the secrets of the Inquisition; who was able to show the errors of the Roman Catholic doctrine;



who could expose, and denounce, and hold up to odium the practices of the Roman Catholic clergy; and that therefore it was necessary that he should be silenced and put to open shame. Now, gentlemen, there was one thing which the Attorney General must have known, and ought in justice to have stated. Every one who heard his statement necessarily would have imagined that these charges had first been brought forward by Dr. Newman in the lecture in which the libel is contained, and had been "raked together" by him in the first instance. Gentlemen, the Attorney General could not have been so ill-instructed as not to know that this representation was utterly incorrect. Every one of these charges had been published openly to the world no less than fifteen months before Dr. Newman took them up. Such charges as these (says the Attorney General), when made with such specific reference to details, time, and place, it was impossible that Dr. Achilli should not meet them. Why, gentlemen, for fifteen months they were published to the world with far more particularity of time and place than is to be found in Dr. Newman's statements; and (as we can show) were brought to the particular attention of Dr. Achilli (for he refers to them in his book); dates were given, documents mentioned,—with every reference requisite to enable him to give an answer; and during all that time he refrained from taking any steps in respect to this publication. But when Dr. Newman refers to these charges, which thus had been brought against him, and which he had not had the courage or the boldness to answer, then Dr. Achilli comes forward and obtains this information against Dr. Newman.<sup>g</sup> Gentlemen, I do not mean to say that the man who publishes libellous charges against another is justified in point of law, by being able to say that these charges have been published previously in the same manner by somebody else, and had remained uncontradicted; but surely it is a matter which, though no legal answer,<sup>h</sup> ought in fairness to have been stated. It is a very different thing to be the first inventor or author of libellous charges attacking another man's character, from what it is to repeat or advert to charges which have been publicly made, and which have been published to the world; which have been drawn to the attention of the party charged, and which he has allowed to remain for months—almost for years, unanswered and unrefuted; for surely his silence may fairly have warranted the man who adverts to them in the second instance, in the inference that the absence of contradiction or refutation amounts to a tacit

<sup>g</sup> In the interval witnesses, of course, might die, or become inaccessible, or could have been deterred from coming forward; and, in fact, many who could have borne testimony were not forthcoming at the trial; and judgments and other documents referred to in the alleged libel, had become destroyed by the burning of official buildings during the revolutions in Italy. Does not this strongly show the absurd injustice of calling on a man at any time to prove charges which may be true, but not proveable?

<sup>h</sup> In some cases it may even be in itself an answer in law; and in an application for a criminal information, is always so.—See Introduction, *ante*.

acquiescence and acknowledgment of the truth of the accusations.<sup>1</sup> Now, let us see, gentlemen, what is the real motive which has influenced Dr. Newman in attacking Dr. Achilli. The Attorney General has told you, with perfect truth, that Dr. Achilli questioned the Roman Catholic faith. Having been brought up in that faith, having become a monk and a priest, and long officiated in both characters, he came forward about 1845, saying, "Behold a convert to Protestantism! one who could no longer endure the abominations of the Catholic Church!" His language against the church which he had left was of the strongest character. He everywhere not only denied the doctrine of the Roman Catholic Church, but he spoke in strong terms of the corruption of the clergy, of the dissoluteness of the lives of the priests, of the abominations of the conduct of the members of the hierarchy. In a letter to Pope Gregory XVI., after descanting on the corruptions of the Roman Catholic Church (it is at p. 376 of his book, entitled, "Dealings with the Inquisition"), he says:—

"Yes; the people, deceived by you, have good reason to believe in you. You have deceived them with your doctrines—your own, not those of the Gospel; invented for your own profit alone; not for the benefit of men's souls; to which you have even denied consolation when they could not give you silver and gold in payment for it. You deceive them with your practices when you, so avaricious, preach disinterestedness; you, so impure, chastity; you, so vindictive, forgiveness; you, so insubordinate, submission; you, so turbulent, peace; you, so self-indulgent, temperance; you, so indolent, industry; you, so immoral, holiness. Thus, to this day, you have deceived the people, and they have ceased to believe in you; perceiving that God did not dwell in you—that God no longer spoke through your untruthful lips."

Gentlemen, if this was the way in which he addressed the head of the church to which he had once belonged, you may easily believe, gentlemen, that when he spoke of the subordinate members of the hierarchy he was not more considerate in his use of terms. Throughout his work he dwells perpetually on what he calls the dissolute lives of the clergy, on the corruptions and abominations of the church, from the pope upon his throne down to the lowest minister connected with the church; he represents that the rule is that of wickedness and licentiousness, and that purity and virtue are the rare exceptions. This is the sort of language in which, since his description of the Roman Catholic Church, he has always spoken of it. If these things are true, it is of course important to mankind, and to the Christian world, that the truth should be known. I quarrel

<sup>1</sup> In all criminal trials it is the best possible evidence of the charge, that it has been made in the prisoner's presence, and been uncontradicted; and in all judicial proceedings, what is said in the presence of one of the parties, and not denied, is good evidence against him, as an admission. This argument was not at all adverted to by the judge, yet surely was material and forcible? It is true, Achilli had barely denied the charges, but had not taken the steps which his own counsel declared the proper step to take to vindicate his character.

not, therefore, with him if his statements are true. *But how are we to know that they are true?* Is a Catholic, who believes, of course, that the church of his ancestors is the one true church,—is he to submit to such shocking imputations upon it? Or is one who having come to it from the conviction that it is the true church, and who, in consequence of that conviction, has been induced to abandon a position of distinction and of emolument, and all that can operate upon meaner minds, for the sake of following what he believes to be clear truth, and to attach himself to that which in his mind is the true faith; is he to remain silent under these accusations against the church and the faith in which he believes? Gentlemen, I am satisfied that there is not one of you, firm as may be your attachment, and firm as may be your affection for the Protestant Church,<sup>j</sup> who would not be ready to do this justice to members of the Catholic Church, or who would not say,—that when accusations such as these, which Dr. Achilli has for years fulminated against the whole body of the Catholic clergy, are made public to the world,—there is not one of you who would not say that it was the right, nay, the duty of a Catholic to come forward and vindicate his church from the imputations and aspersions thus cast upon it. It would, indeed, be a mockery to talk of “toleration”—it would be a farce to say that religious opinions were free—if you would only listen to accusations against the Catholic Church, and not allow its members to raise their voices in its vindication. Now, gentlemen, the defendant, Dr. Newman, had become a member of the Roman Catholic Church. All who belonged to the Church of England had witnessed his desertion of it with regret: his ability, his learning, his piety, and integrity, no man, even in the envenomed conflicts of religious strife, has ever ventured to question. Under the influence of strong feelings of conviction he had become a convert to the Catholic faith, and he now came forward to vindicate not only the religion he had adopted, but himself, for the course he had pursued. He found that one who, like himself, was a convert, but a convert from, not to the ancient faith, had attacked the church and the religion which he had embraced. He found, also, that the mode which this individual adopted for the purpose of attacking the Catholic Church, was not merely to impugn its doc-

<sup>j</sup> “*Sed quære de hoc,*” as the old lawyers would say. It is morally certain that the majority of the jury did not believe in, or belong to any church at all; and even of the few who might be members of the Church of England, it is pretty certain that all were of that class which do not really believe in a church as a divinely appointed body, with a divine mission, and sacraments. And let the reader be reminded, that Mr. Drummond, recently, in the House of Commons, declared that no one of this class would be a fair judge in any tribunal to consider the case even of an Anglican who believed in the sacramental system; which (he justly said) constitutes the essence of a church.—(*Debate on Mr. Bennett's Case.*) What a farce, then, was this trial of Dr. Newman by a common jury (for it really was so), chiefly composed of those to whom the very idea of a church was absurd, and to whom sacraments were superstitions.

trines and impeach its creed, but the course he pursued was to bring the whole of its clergy into odium and disrepute, and to hold them up to odium and execration, as men whose whole lives and habitual practices were so abandoned, that, to use his own expression, applied to Pope Gregory XVI.,<sup>k</sup> they “cried to heaven for vengeance,” and demanded that the good portion of mankind should unite to sweep away these abominations!<sup>1</sup> Can any man wonder, when these attacks were made,—openly, repeatedly in lectures, in pamphlets, at public meetings, and in books,—that a champion of the church thus attacked should think fit to come forward in its defence? Gentlemen, I do not appeal to your prejudices or passions—they are not on my side—but to your judgment, and I ask you with confidence, can any one of you hesitate to say that those who uphold the cause of the Roman Catholic Church were justified in making what defence they could against such charges as these, so long as that defence was consistent with truth and honesty? Now, let us see what was the course to be pursued by a party thus acting as a champion of the Roman Catholic Church? How were these accusations to be met? There was this difference between the accusations of Dr. Achilli against the Church and of Dr. Newman against Dr. Achilli, that the latter dealt chiefly in general charges; it was rarely that facts advanced by Dr. Achilli were specific—they were vague and unsatisfactory—charges that corruption abounded in the church—that the lives of its clergy were crowded with iniquities of every description—but the charges, though vague, assumed importance from the circumstance that the man who came forward to accuse and denounce, was not only accuser but witness; he could say “I am a living testimony of the things I speak to; I have been a monk and a priest, and I know what monks and priests do; I know the interior of monasteries and convents, and I tell you of the lives they lead there, and the practices there pursued; I can tell you of the wicked and sinful things there performed, against the laws of God and man; and for these things I tell you that these institutions, and the church to which they belong, should be swept away from the face of the earth, as unworthy any longer to be allowed to exist on it.”<sup>m</sup> Surely he would not adopt statements of this kind until their truth was shown? Here is a witness who speaks, not to specific facts, but as to general charges, of what he alleges as within his own knowledge. What, then, is the

<sup>k</sup> A pontiff of exemplary piety, and unimpeachable character.

<sup>1</sup> It was observed that the foreman and another of the jury nodded their heads assentingly to these shocking statements; both when originally read and now repeated. This is only a specimen of the outward signs by which the jury denoted their foregone conclusion, and their predetermined resolution to convict. Most of them, probably, had been prejudiced by Achilli's awful book, and had obviously imbibed the most intense horror and hatred of the Catholic Church. Was this one of the objects of Achilli, in waiting till after the circulation of his book, before he prosecuted any one for these charges?

<sup>m</sup> Here, again, one or two of the jury nodded assent.

first question which occurs? Who is this witness who thus comes forward to denounce the church of which he was once a member, and is now an apostate? Is he a person worthy to be believed? Is his testimony such as may safely be relied upon? Take the common every-day illustration to be found in the proceedings of courts of justice. A witness comes forward to depose to facts upon which, perhaps, it is impossible to meet him directly, because he alleges them to have taken place entirely within his own knowledge. What is the first question those who are called upon to act in defence of parties accused upon the testimony of such a witness think it necessary to put? Who, and what is the witness? whence comes he? what are his antecedents? what are his motives? That is the common and obvious course suggested by good sense and experience of mankind. The same question, surely, presents itself in the case of Dr. Achilli. He holds up the Catholic hierarchy and institutions to odium and execration, on the strength of his own intimate acquaintance with the proceedings of the clergy. The first question surely is,—who are you that tell us these astounding facts? He says, “I am one on whose high sense of morality and religion these abominable things have made so deep and painful an impression, that I have resigned all, rather than continue a member of a Church in which they occurred. My motive for leaving it was, that my reason revolted against its doctrines, and still more, that my moral and religious sense revolted against the deeds by which I found myself surrounded.”<sup>a</sup> Gentlemen, if these were the grounds on which he left the church;—if it be true that such were the abominations he witnessed, that though he had already attained a position of proud pre-eminence, and although at every step as he proceeded there appeared a prospect of his rising higher and higher, until he attained the highest rank in the church (and this is what he represents),—if it be true that he abandoned all this from a sense not merely of the erroneousness of the Catholic doctrines, but disgust and abhorrence of the abominations of the Catholic clergy, —I admit that his testimony is such as would be calculated to make a powerful impression on the minds of those who were wavering as to their faith, and still more upon the minds of those who believed that the pure and reformed Protestant worship was more acceptable in the eyes of God; and who, being members of that communion, would be naturally disposed to take an unfavourable view of the doctrines and the practices of the Catholic Church. Was it not, then, natural on the part of those whose duty it was to vindicate the faith in which they were born, or which they had embraced from conviction, against these aspersions,—to inquire who and what Dr. Achilli was; and to ascertain whether it were true that he had been induced to quit the Catholic Church, and become

<sup>a</sup> Nothing could be more effective and powerful than this passage, and a similar passage in Sir Alexander's reply.

a convert to the Protestant, from the motives and for the reasons he represents—abhorrence of the practices of the Catholic Church.” What if it should turn out that, instead of having been voluntarily a deserter from the faith in which he was born, he had been expelled ignominiously from that church for his crimes, and that he had adopted Protestantism simply because the exigency of the moment required that he should do so as a means of obtaining a subsistence—surely, if this should turn out, it would be a circumstance of the greatest possible weight in determining the question whether his evidence, in the matters about which he has spoken, is deserving of the slightest credit. Nobody can for an instant doubt that it would be a most important fact and ingredient in the consideration of the case. If you found that instead of having quitted the church, he had been expelled from it, that would necessarily be in itself a circumstance calculated to detract materially from the value of his testimony. It entirely destroys the inference which would necessarily be produced from the fact, if it were a fact, that he had quitted the church from disgust for its doctrines and the practices of its clergy. No one can doubt that it was a most important question to be solved. What if it turned out that Dr. Achilli had been expelled ignominiously from the Catholic Church? I ask you, if that were proved,—I ask you, if any one of you had found your church or your religious community attacked in the uncompromising manner in which Dr. Achilli did not scruple to attack the Catholic Church, would it not be deemed right to publish such a fact to the world? No man can answer that question in any way but one. If his expulsion from the church had been brought about, not merely by his apostacy from its doctrines, but had been the consequence of his own confession of crimes, bad enough in any one, but detestable in one who had become a member of the sacred calling of the Christian ministry, would it not have been the duty of those who were sifting his evidence, and anxious,—because believing it utterly untrue,—to disprove and refute it, to bring this fact before the world? Gentlemen, this is our case! Such is the position in which Dr. Newman was placed by the writer of the article in the *Dublin Review*, which appeared before Dr. Newman published these Lectures. When Dr. Achilli came to England, he everywhere and in every way publicly denounced the Church of Rome; representing himself as one who came forward as a witness, in consequence of the impression produced upon his mind by the horrors he had seen. This naturally led to inquiries as to who and what he was. And so early as June, 1850, was published an article in the *Dublin Review*, giving the whole account of his life, with the charges referred to in this case, giving the most minute details in each instance,—challenging him to meet them; stating the proofs that would be adduced—in documents (judgments and records of courts, or of the police) or in living witnesses. Gentlemen, for fifteen months Dr. Achilli allows these charges to remain unanswered

and almost unnoticed—no, I am wrong there, for in 1850 he published a book called “Dealings with the Inquisition,” and in that book he adverts to charges brought against him in the *Dublin Review*, and contents himself with a general denial of them, but takes no steps against the proprietor or publisher of this review, or the author of the article. Yet the author was not beneath his notice, for it was no other than Cardinal Wiseman. He himself says Dr. Wiseman is the author of the article, and he adverts to him in these terms:—“There is the renowned Cardinal Wiseman, the archbishop of Westminster, according to the pope’s creation, the same who has had the assurance to accuse me from his pulpit, and to publish an infamous article in the *Dublin Review*, in which he has raked together, as on a dunghill, every species of filth from the sons of Ignatius Loyola; nor is there lie or calumny that he has not made use of against me.” Now this book was written before Dr. Newman’s lecture appeared; he knew, therefore, of this article in the *Dublin Review*, but he takes no proceedings against it, although all these facts, now adverted to in far more general terms, were by Dr. Wiseman specifically set forth—facts which my friend admits it was incumbent on Dr. Achilli, the moment they were mentioned, immediately to bring before a court of justice. Well, gentlemen, Dr. Newman, finding Dr. Achilli continuing to propagate those charges against the Roman Catholic Church, not merely making those statements in discourses from the pulpit or at public meetings, but publishing them in a book which professed to relate “Dealings with the Inquisition,” taking the opportunity of going over the whole of the institutions of the Roman Catholic Church, and denouncing them in terms such as I have before referred to—Dr. Newman at length comes forward, and certainly does reiterate the charges that had appeared fifteen months before in the *Dublin Review*, referring to the very book in question. Well, I am quite ready to admit that Dr. Newman is legally responsible for every word to be found in his pamphlet, although published elsewhere before that pamphlet appeared. Up to the present moment, I have been endeavouring to make clear to you the position in which he was placed, and the motives which have induced him to come forward. But then the question is, whether he can justify these charges. It was not to stop the mouth or stifle the voice of a man who came forward to denounce the Catholic faith, but it is for a very different purpose,—to test the credibility of the witnesses, by a reference to his character and antecedents. No one can hesitate to admit that this is a perfectly legitimate course for any one to pursue who was interested in the truth or falsehood of the charges to which the accuser referred,—to endeavour to ascertain how far he was worthy of belief. Inquiries have been made respecting him, as inquiries had been made before the article in the *Dublin Review* appeared; and the result is, that as Dr. Newman felt himself justified in adopting these charges, which had

remained unanswered or unrefuted in the first instance, so now, having published them, and being called upon to answer for it, after further investigation he feels himself justified in putting upon the record a plea, alleging openly in the court that these charges are well founded, and that there is truth in all of them; and he is prepared to vindicate thus the course of conduct he has pursued. And here, gentlemen, I must say the Attorney General has adopted a course which has filled me with astonishment. His client, Dr. Achilli, has come forward to vindicate his character from the aspersions thus cast upon him. He knows—he has long known—every one of the accusations which have been brought against him: he has, by means of the special plea, put upon the record about five months ago, distinct enumeration of each specific case, with all the details of time and place necessary to enable him to meet the different charges. He is the accuser: he has put Dr. Newman upon his defence; he is here; he is within the precincts of the court; the Attorney General could have put him into the box; I should have supposed him all anxiety to be there! I should have imagined that the first object of his heart would be at once to rush into the witness-box, and to go through the charges brought against him, and deny them upon his oath, and show them there was no foundation for them—for the falsehood and the calumnious character of which he here calls Dr. Newman to account. But, no! That course is not convenient. It is better to see what can be made out on the side of the defendant; if witnesses can be broken down; if documents can be excluded; it may be that a verdict may be obtained without calling Dr. Achilli before you.

The *Attorney General*.—I pledged myself to produce him.

Sir A. *Cockburn*.—Yes! but at what time?

Lord CAMPBELL.—The Attorney General has pledged himself to call Dr. Achilli, and I hope I may say, without being charged with showing any partiality, that the natural course seems to be, first to bring forward the proof of the accusation, and then to go into the defence.<sup>o</sup>

Sir A. *Cockburn*.—Gentlemen, I will only say, then, that if this be so, I entirely concur in the course I understand was pursued by my learned friend when I was not in court—of demanding that the prosecutor should not be present while our witnesses were being

<sup>o</sup> The observations of Sir A. Cockburn were evidently making an impression upon the jury, when Lord Campbell interfered, and destroyed it by his observation; as to which, the writer appeals to the profession, whether the practice be not, in a case of criminal information, for the purpose of clearing the character of the prosecutor, at once to call him into the box, and submit him to examination. The case of the duke of Cumberland is an instance which will occur at once to many—the more in point, as resembling the present in respect to the lapse of time, and the gravity of the charges. By declining to call Achilli before he had an opportunity of studying what the witnesses stated against him, his counsel evaded the only test which could be applied to his statements, sworn in his own defence.—See note, *ante*, p. 58.



examined. I pass on at once, then, to the accusation, and to the case which will be submitted to you, only observing that I own I should like to have had an opportunity of examining Dr. Achilli himself, before he knew the exact amount of evidence which could be adduced against him. It appears—and I am speaking now only from the information Dr. Achilli has himself furnished us with—it appears that Dr. Achilli, who is, I understand, somewhere about fifty years of age, was brought up at Viterbo, where he received his education, and in 1819 he entered as a novice into the Dominican convent; there he passed one year of his noviciate, became a monk in the ensuing year, and afterwards a priest of the Roman Catholic Church. In both, I believe, but, at all events, in one of these capacities, he took a vow of perpetual chastity. Gentlemen, no one can doubt, however loose may be the practices of society on subjects such as that I have referred to, in the case of a person in the holy office and calling of a minister of the Gospel, continence is a duty which cannot without grave and serious offence be violated. But when to that consideration is superadded solemn and holy vows, taken voluntarily upon this subject, one can understand that accusations of this kind assume a very grievous character. It is admitted that charges imputing to a monk or a priest incontinence, are of a most serious character; and I will only accompany that with this observation, that if this be so, surely they must be matters of grave and serious moment if they turn out to be true in the case of a man who is denouncing those very crimes against the clergy of the Roman Catholic Church, as one of the reasons for his leaving that Church, and becoming a convert to Protestantism.<sup>p</sup> Gentlemen, Dr. Achilli became a priest in the year 1825, and in 1826 he was appointed professor of philosophy at the seminary or college at Viterbo, and remained at Viterbo, with occasional absence, till the year 1833. The libel charges that during that time he was guilty of various acts of incontinence at Viterbo. It says, first, “I am that Achilli who, in the diocese of Viterbo, in February, 1831, robbed of her honour a young woman of eighteen.” Is that true, or false? It might be said that, if at an early period of life, when his blood was hot, he committed an offence of that kind, but had atoned for it by a life of purity and holiness, it would be cruelty to fling the charge in the face of a man who now came forward to reprove those crimes. I concur in that view; but this is only the commencement of the history, which will be brought down year by year to the present time. This is the first case specially referred to in the catalogue of enormities charged against him:—In February, 1831, he robbed of her honour a young woman of eighteen. I will produce that young woman before you, and you shall hear her tale. Her name was Elena Valente. She has now for some time been

<sup>p</sup> By the instinct of an experienced advocate, Sir Alexander anticipated the objection the jury would take to his examining Achilli on charges of this kind, and endeavoured to deal with it.

married. You shall hear how he pursued her, and how at length she became his victim, became disgraced, and remained so for some years, until at last, her character being to a certain extent retrieved, she was, as I have said, married; and has since lived in a respectable position. That is one case. Then, there is the case of Rosa de Alessandris, in the year 1833, and also that of another person, in the year 1834. As to these cases especially, gentlemen, I must say I should like to have had the opportunity of asking Dr. Achilli some questions before he knew the amount of evidence I could produce; for a party who has the opportunity of swearing in his own defence, and of doing so after he knows the worst that can be proved against him, of course is in a very favourable position. Rosa de Alessandris is married, and will not come forward; but I have the written confession of Dr. Achilli, and the same as to the other; he has been actually tried for these things; he has confessed them, and has been punished for them! Gentlemen, with respect to his deprivation, there is, I believe, a mistake in the date; but I shall prove that for the offence of incontinence he was deprived of his faculties. He remained at Viterbo until 1833: proceedings were instituted against him in the court of the bishop;<sup>9</sup> and on his leaving Viterbo and going to Rome (where he had strong friends), the affair was hushed up, and he became professor in the college of the Minerva. He remained at Rome a year, and then proceeded to Capua; and, as he states, at the invitation of Cardinal Serra, he preached the Lent sermons there that year. Gentlemen, there is no doubt that he from his youth has shown eminent ability; and being a man of great knowledge and eloquence, his preaching was sought after; but this is quite consistent with his private life being quite irreconcilable with the sacred character he held. It seems, that having left Capua, and having stayed a year at Rome, he passed his time for two or three years between Capua and Naples. At this time there occurred two of the cases which form the subject of the present libel; and he admits by his own confession two cases at Capua! Then, we come to the case of seduction at Naples, in 1840. I have the woman here,—Maria Principe, now married to Balisano. I shall prove that this woman, being then a girl of fifteen, he debauched, at the convent; that she became pregnant; and that complaint was made by her father and mother at the time. The father is dead; but I have her here. She is now married; and is, I believe, a respectable person; her mother comes with her, and you shall hear their evidence. Remember that her statements are not produced here for the present occasion; they had been made long ago, and brought to the attention of Achilli by the complaints of the parties; there were proceedings before the commissioner of police; it is a matter recorded and known as having happened many

<sup>9</sup> Which, it will be found, could not be proved, because the record had been burnt; and Lord Campbell refused to receive a copy made by an official person, and authenticated by a municipal seal.

years ago. Well, gentlemen, it seems that soon after, Achilli left Naples; and it seems that, in 1839, he separated from the Dominican order to which, up to this time, he had been attached, whether he separated himself so entirely as he represents is a question; for we find that after this he is still spoken of as of the order.<sup>r</sup> However, he became, he says, secularized, and took upon him to quit the order free, as he states, from the obligations which continuance in it imposes.

He went on preaching at Capua, &c., but such was the scandal produced by these various acts—which did not merely imply incontinence, but the greatly aggravated offence of seduction, if not of violation—the scandal caused was such that it was necessary to bring the matter before his ecclesiastical superiors, by whom he was sentenced to suspension from the functions of the priesthood, and seclusion in one of the more rigid houses of the order. This did not suit Dr. Achilli (laughter), and accordingly he began to meditate secession from the Church. The fame of his proceedings had become so notorious, however, that it reached the Court of Rome; he was demanded from the Neapolitan Government; he was taken to Rome and brought before the Inquisition; he was then charged specifically with the crimes I have mentioned, and the acts of incontinence tending to bring disrepute upon their order. I have here an authentic copy of the record of the judgment, which I shall put in evidence. It contains the confession of Achilli himself of these very specific acts. He was sentenced by the Court of Inquisition to perpetual deprivation of all ecclesiastical functions; prohibited from preaching, from confessing, and from administering the sacraments; and condemned for penance to three years' seclusion in one of the more rigid houses of the order. He retired to the convent of Nizarro, where three years were to be passed in doing penance. But this did not suit him. (Laughter.) In his book he said he went to Nizarro to arrange his private affairs. He does not say a single word about these proceedings before the Inquisition. I should have liked to have asked him a few questions before I laid my proofs before you on this part of the case. However, he did not stay at Nizarro, but went off in haste to Ancona, and meeting with a gentleman, he got his name inserted in his passport, and went with him to Corfu, which is in the dominions of this country. He now openly secedes from the Roman Catholic religion, and professes to have adopted the pure truth of Protestantism. At Corfu he opened what he called an Italian church, but there he soon got into a serious scrape, "and made the wife of a tailor faithless to her husband." The tailor (named Garramoni) had separated from his wife, and had been adjudged to allow her 2s. a week as alimony. But he dis-

<sup>r</sup> In the judgment of the Inquisition (in 1841, after the secularization) it is ordered that he retire to one of the houses of his order; and upon the hint thus afforded, the Attorney General founded one of his arguments for his atrocious charge of falsification—a flagrant quibble, however; for it might still very naturally be spoken of as his order, *i. e.*, the order to which he had been vowed.

trusted the fidelity of his wife, and watched her house at night with the view of clearing up his suspicions, and one night, at half-past eleven o'clock, he saw a person come there, not in the dress of a priest, but in an ordinary dress. He seized hold of the party, and holding up a light, he found that it was Dr. Achilli. The tailor then instituted a suit, which ended in a compromise, and it was agreed that the husband should pay no more money, and let his wife off on that condition. We had this man here for many weeks, but unfortunately he was obliged to leave England: we have a man who was present and saw the whole of the transaction,—a man who saw the seizure made of the person who had gone into the house,—and I will prove that Dr. Achilli was that person. I have also the transcript of the proceedings, which will establish the assertion made in the libel, that “your name came before the civil court of Corfu for your crime of adultery.” After this scandal he left Corfu and went to Zante, and it was now that he “made acquaintance” with the wife of a chorus singer named Coriboni. The wife of this man was a woman of notoriously bad character, combining, as it is stated, prostitution as a means of getting money with the profession which her husband carried on. Dr. Achilli took these people into his suite (laughter), and travelled with them to Zante, where he was desirous of establishing this reformed Italian church, under that mission which he boasts in his book of having received from Heaven. He there applied to a gentleman named Reynolds, who held an office of respectability and trust in the customs. Mr. Reynolds was disposed to further the object, became a subscriber, and obtained the subscriptions of others, and interested the vice-governor of the island, Colonel Ford, and thus having obtained considerable subscriptions, the church was opened. Mr. Reynolds happened to know something of this Madame Coriboni, whose character was open and notorious, and he was not a little astonished, when he went to the church, to find the wife officiating as pew-opener, and the husband as clerk. (Great laughter.) He thereupon remonstrated with Dr. Achilli (I have Mr. Reynolds here, and will put him in the box); upon which Dr. Achilli assured him that the woman was a second Magdalen (laughter), had forsaken her evil practices, and intended to lead a pure and virtuous life. Mr. Reynolds hardly knew what to make of this; but after a little, circumstances came to his knowledge which led him to think that the Magdalen was anything but a penitent! (Laughter.) It so happened that his house was opposite Dr. Achilli's, and commanded a view of a room used as a laundry, in which the woman worked; and he thus had an opportunity of seeing Dr. Achilli toying with this Magdalen in a way not at all satisfactory to one who had desired to receive from him the teaching of a minister of religion. (Great laughter.) This happened more than once, and there was always that degree of familiarity between the parties which naturally led to unfavourable conclusions. From what was seen going on

between Dr. Achilli and this woman it became necessary to close the blinds of this and the adjoining houses, the ladies in which were much scandalized. Dr. Achilli was also seen walking arm-in-arm with this lady, to the infinite scandal of the new Protestant congregation; and no doubt was left that a criminal intercourse subsisted between them. Mr. Reynolds and Mr. Ford remonstrated, but as Dr. Achilli persisted in keeping her in his house, they would have no more to do with him, and the congregation was broken up. Dr. Achilli then went to Malta, and put himself in communication with some gentlemen there connected with a plan to establish an Italian Protestant college at Malta. A body of gentlemen, at the head of whom was the earl of Shaftesbury (a nobleman who is at the head of every benevolent undertaking calculated to promote the moral, social, and religious welfare of mankind), were endeavouring to introduce the Protestant religion among the Italians in Malta, and with that view to establish a college there for general instruction, and it was arranged that Dr. Achilli should be the theological professor at the college, with a handsome salary; it being believed that he had been actuated in his secession by the purest motives. He goes to Malta, where he is associated with others, two of whom were two persons who had been priests (named Saccares and Leonini), and who had been somewhat too hastily adopted at this college. A person named Kaossi, who had been an Armenian priest, and fled from the Roman Catholic authorities, was also a member of the college, and he had not been long there before he made charges against his fellow labourers, charges of gross immorality, involving Dr. Achilli as well as Saccares and Leonini, though he was only so far connected with them that he was said to have connived at their conduct. These charges were referred to the superiors of the college, the Rev. Mr. Hadfield and the Rev. A. Watt, and by them were transmitted to the committee in London, who desired an investigation to be instituted: as Saccares and Leonini, as well as Dr. Achilli, denied the charges, Kaossi was called upon to prove his charges, or be considered as a calumniator. His principal proof consisted of a confession, alleged to have been made by Saccares, but which Saccares and Leonini denied altogether. The consequence was that Kaossi was looked upon as an inventor, and was about to be dismissed, when numerous persons came forward and gave a different account of the affair, which led the Messrs. Hadfield and Watt to appoint a day to resume the inquiry. All this was known to Dr. Achilli. It was known to him that these charges were of the most serious character, charges which related to the introducing of bad women into this Protestant college. It was known to him that the board were most anxious for another investigation; but, to the astonishment of all, Dr. Achilli took upon himself, without communicating with the authorities at Malta or London, to send Saccares into Sicily to distribute Bibles there, which of course anybody else could have done, and this was looked upon as a mere pretext to get

rid of him, as it necessarily put an end to his connection with the college. The board in London were indignant at the proceedings on the part of Achilli, and it ended in his dismissal from his office. The committee, consisting of gentlemen of the highest respectability, the earl of Waldegrave, the Rev. R. Burgess, and others, dismissed him after investigating the matter. Being dismissed, in 1850, he came to England, when he began that course of lecturing and writing, and holding up to hatred and disgust the doctrines and practices of the Roman Catholic Church, which he has since pursued. I should now tell you that in the year 1849, being at Rome, during the time of the Revolution, a time when anarchy prevailed, he there married a lady named Heley, according to the rites of his new Italian church. Whether or not that was consistent with his vows of perpetual chastity is a question into which I will not enter. But, however, having now become, according to his own view, a husband—whatever might have been his past conduct, one would have supposed that from the moment when he entered into the holy estate of matrimony, at least, we should have heard no more of the incontinent doings of Dr. Achilli. But he had no sooner entered London than he recommenced his usual practices. At the first house in which he lived in London there was a maid servant named Harriet Harris, and he made use of every effort to seduce that young woman. He failed, and she complained to her friends. Mrs. Achilli shortly after arrived in London, and he desisted from his attempts. Though not successful with the girl Harris, he was successful with another, named Jane Legg. He took a house at No. 11, Shaftesbury-terrace, Pimlico. Jane Legg was his servant there, and yielded to his solicitations; she became with child; I believe, however, not only Dr. Achilli, but a friend of his also, who was there, had connection with her. She went away, and had a child, who died of the small-pox; and, in conversation with her sister, it appears that though Dr. Achilli never did anything for her, he never denied that he had had to do with her. He had another servant, Sarah Wood, whose reluctance and resistance he overcame; and another, named Catherine Gorman, with whom he did not succeed. Gentlemen, we have these witnesses here, and shall call them before you. If these witnesses are to be believed in; if, when a married man, after having removed from those demoralizing examples which he, Dr. Achilli, alleges himself to have witnessed when in the convents of the Dominican order; if, after having left that polluted atmosphere for the purer atmosphere of the Protestant Church, and having allied himself in what he believed to be a matrimonial alliance with a young lady who devoted herself to him; if you find after all this, he still continued his dissolute and licentious conduct, and he endeavoured to make every woman the victim of his insatiable lust, that will tend, I think, to throw some light upon the other charges, and will, I think; lead you to believe that these charges are well

founded. And if these things be so, I ask whether those whose Church is denounced by such a man, on the grounds of the alleged licentiousness of its clergy, are not justified in holding him up—him, the accuser and witness—in the true colours in which he deserves to be portrayed, in order that the people of this realm, who are to judge of the truth of his representations, and whom it is sought to influence in their religious views by the statements he makes—I ask whether it is not right that his real character should be portrayed, that they may judge of the credit to be attached to the evidence of such a witness?—that they may judge whether the Catholic Church is that foul nest of pollution and crime, or whether these things are not fabricated and invented by him in order to conceal the real reasons and the fact of how he ceased to be a member of that Church; whether it were as he represents, that it was from his horror at such abominations, he was induced to hold the clergy of that Church up to execration; and whether it was that, having been guilty of these excesses himself, and having been brought to justice and exposed to penance and contrition, he takes care not to bring forward this in his narrative, because he knew that no credit would be attached to statements coming from so foul a source? Whatever may be the zeal of the Protestant Church (and I rejoice to see it burn brightly when occasion requires), I trust it will never lead us to be guilty of denying to others the free, full, and unfettered exercise of their religion, or the free expression of their opinions, or to prevent them from confuting malignant and wicked accusations. Gentlemen, it was under such views alone that Dr. Newman came forward. Dr. Achilli is to Dr. Newman utterly unknown. But when he came forward as the public accuser and denouncer of the Church of which Dr. Newman is now an ornament, he feels that he was justified in ascertaining who and what Dr. Achilli was, and, if he has been guilty of these outrages upon religion and morality, showing him in his true colours. Gentlemen, I say that the cause of truth demands that in these matters of religious opinion and controversy—matters in which all mankind are deeply interested—truth should be on both sides adhered to, and that testimony, to which great effect will necessarily be attached, should be sifted, and when it rests on the character of the witness, that character should be ascertained and judged of by those who are interested. On the other hand, I admit that when, with a view to silence an adverse witness, falsehoods and crimes are charged which are known to be untrue, that is conduct on which reprobation cannot be too severely visited. It is for you, gentlemen, to judge in which of these two positions Dr. Newman stands. You will certainly be satisfied that at least he has not invented these stories. It will be proved satisfactorily that he has not intended to be a calumniator and slanderer. These are matters which have been brought against Dr. Achilli long ago—matters standing recorded against him;—he cannot be unprepared to meet

them. I believe, from my instructions, that I shall be enabled to prove this case, not indeed in every minute particular, but at all events as to the substantial charges, I shall be enabled completely to make them out; and then it will be for Dr. Achilli, or for his counsel, to see what answer can be given to them. I own I should like to have known the answer Dr. Achilli would have given before he knew the extent of the proof I could adduce. I think, however, my learned friend (Serjeant Wilkins) was right, in my absence, in desiring that the witnesses should be ordered out of court, that Dr. Achilli should not at all events know the precise extent of the proof we have to bring against him.<sup>s</sup> Be that as it may, he will have an opportunity of going step by step through every portion of the charges. You will hear what he has to say in his defence. If Dr. Newman has charged him unjustly,—if the accusations are unfounded,—Dr. Newman will be the last man to flinch from the consequences which must fall upon him; but he will be protected by the conviction and consciousness that he has not been influenced by any personal feeling or vindictive motive against Dr. Achilli; that he has simply attacked him in order to repel the foul accusation which Dr. Achilli has thought proper to bring forward on his own testimony against the Church, of which Dr. Newman is now a member. Gentlemen, when Dr. Achilli shall have been called, I shall again have an opportunity of addressing a few observations to you. In the mean time, I will only ask you to do this—forget for the moment that you entertain religious opinions on one side or the other; look at this case as if no religious considerations were connected with it, and, forgive me for saying, be upon your guard lest aught of prejudice that may pervade your minds should mingle with your judgments. Bring to the case a calm, dispassionate consideration of the evidence laid before you. If you are of opinion that Dr. Achilli is not guilty of these matters charged against him, then Dr. Newman must submit to your verdict; but if you believe the witnesses—if you are satisfied by the documents I shall place before you—then, although it may be painful to your feelings to come to the conclusion that Dr. Achilli is an impostor, and that, though the accusations brought against the Roman Catholic Church, however congenial to Protestant feelings, are unfounded and calumnious, you will not hesitate to do justice, and in that case we look with confidence to your verdict.<sup>t</sup>

Elena Justini<sup>u</sup> was then called in, and having been sworn, was examined by Mr. Bramwell, through an Italian interpreter.—

<sup>s</sup> From the daily reports, however, he knew all the evidence against him before he was called; and from his own short-hand writers.

<sup>t</sup> Sir Alexander Cockburn's address occupied nearly two hours; he sat down about twelve o'clock.

<sup>u</sup> This witness had a most modest and ingenuous countenance, and gave her evidence in a very artless and apparently truthful manner, which made a great impression. As Sir F. Thesiger conceived he was justified in imputing that she



My age is forty years. I am married to Vincenzo Justini. I was married two years ago. My maiden name was Valente. I am now living at Viterbo, where I have lived from my birth. I know the Dominican convent there. I knew Dr. Achilli at Viterbo. He was a monk of that convent. I have been in that convent when he called me. I was then about seventeen or eighteen years of age. Dr. Achilli deflowered me. It was in the sacristy. I was in service at that time with Signora Gentili, with whom Dr. Achilli was acquainted. He had been a visitant to her house in the country for a month. He had offered familiarities to me before. I had walked out with him alone. He had asked me to walk with him. He had already commenced to insult me when he was at the country house. I was intimate with him again some little time after the first occasion at the convent. He sent for me by a messenger. It was customary to give servants a present after visiting in a house; and he sent to say he wished to give me one. I went to him. I asked him whether there was any sin in it, and he replied that there was not. I told him that there was hell in it. He said, "Not at all, otherwise hell would be quite full."

Cross-examined by Sir *F. Thesiger*.—I arrived in London last Thursday. I shall have been away from Viterbo six months on the 23rd of this month. I have since been living at Paris, Dover, and some other places (the name of which I do not know) between Dover and London. I came from Viterbo with Madame Rosina Gilbert; my husband also accompanied me. I was in Paris three months. I came to Dover, as far as I recollect, in May. There were other witnesses in this cause at Paris—Giovanni Principe and her mother. They lived in the same house with me and my husband. They accompanied us to Dover, and lived there with us. We received instructions to leave Viterbo from a lawyer. Did you see your priest before you came away?—Yes; the curate. Did he send you here?—He told me I ought to come here. While I was at Paris, I told Principe and her mother of what had happened to me, and they told me what had happened to them. I did not know them before I met them in Paris. I have seen some of the other witnesses in this case in London, but not at Dover or Paris. I have seen an English gentleman named Reynolds, who lives at Corfu. Have you spoken to any Roman Catholic priest since you came to London?—No; I have not lived in London with any of the witnesses but the two Principes. I had known Achilli a month before the occurrence at the convent. I had been in the service of Signora Gentili about a month before that took place. The convent is about two miles from her home. Dr. Achilli came to

gave false evidence, and Lord Campbell intimated that it was suspicious, and was not confirmed, the reader is requested to mark it carefully, in order to compare it with Achilli's, which was pressed by Sir A. Cockburn, as completely confirming it; and to which confirmation Lord Campbell never referred the jury at all!

stay with her at her country house for a month. I was the only servant in the house. The other members of the family were two men. It was, perhaps, five or six days after Achilli came that I first took a walk with him in the country. He solicited me on this occasion. He said that he would take me to show me a place where the two gentlemen of the Signora Gentili's family were in the habit of shooting. Instead, however, of taking me to see the chase, he took me to a hut, where I was with him alone. He there solicited me, but I denied him. I returned home in his company. Did you tell Signora Gentili what had occurred?—No. Did you tell it to your confessor?—Yes; five or six days afterwards, when my mistress allowed me to go to confession.<sup>v</sup> I never again walked out with Achilli. He solicited me once more during his stay in the house of Signora Gentili. I did not tell Signora Gentili what had occurred, but in the morning I showed that I was disturbed, and said that I would leave the place. I did not, however, leave the house until Achilli had left. I was only engaged for a month. I left the signora's on the last day of October, and the affair at the convent happened some time in November. Achilli had sent for me to the convent, saying that he wanted to give me the usual present to servants. When I got there he was waiting for me in the sacristy. The sacristy opens from the church. I went into the sacristy because I saw him there, and beckoning to me. He gave me nothing but a silk handkerchief, which was older than he was. (Laughter). Next day, I went to the same confessor to whom I had told what had happened before, when I was living with the Signora Gentili. I began to cry, and he then said, "I knew you were in the hands of a rapacious wolf in sheep's clothing." Did you tell your mother what had taken place?—No; because the confessor forbade my mentioning it, as Achilli was an ecclesiastic.<sup>w</sup> Achilli afterwards sent to me to come to him at the house of a family who were related to him at Viterbo. I felt I was dishonoured, and therefore I went.<sup>x</sup> After the first occasion I changed my confessor,

<sup>v</sup> It is evident there were some restrictions upon her in this respect; and, perhaps, this was the cause of her fall. At all events, it confirms the Catholic theory, that frequenting the sacrament of penance gives strength to resist sin; the very disclosure of temptations often destroying them.

<sup>w</sup> These and similar questions showed the drift of the cross-examination was not so much to break down the evidence (which so acute an advocate soon saw hopeless), as to produce the impression on the minds of the jury and the public, that the fact must have been revealed by the confessor, with a violation of the secret sanctity of the sacrament. The ingenuous disclosure by the witness, however, of the fact that Achilli had told it to a friend of his, quite frustrated this pious purpose. Moreover, the messages which went backwards and forwards might naturally have revealed it; with other circumstances in the course of an intimacy of that kind. Now, Lord Campbell put Sir F. Thesiger's point to the jury, but never adverted to these obvious answers.

<sup>x</sup> When the witness gave her evidence this was remarked by every one as a touch of nature, most materially confirming it; but Lord Campbell actually put it to the jury as a circumstance of suspicion! As if a woman after her fall were to be judged of by the same reasoning as before!

and did not go so often to confession as previously. I told the second occurrence to my new confessor. Did you tell him the name of Achilli?—No; because it is the custom not to mention the name of the sinner, but merely the sin. Did you mention the name of Achilli to the first confessor?—Yes; because, as he lived near the villa, I thought he might otherwise suspect some of the family. Besides the handkerchief, he gave me a beautiful present—three sausages. (Laughter). They were both given me on the first occasion. He promised, but never gave me anything afterwards. During all this time you never told your mother what had happened?—No. Did you ever tell it to any one but to your confessors?—No. Once, to my great surprise, a person asked me, “Is it true that Father Achilli has been intimate with you?” I replied, “Who told you that?” and he answered, “Achilli himself.” He said it to me because, as far as I understood it, he wished to arrive at the same end. This was some few months afterwards. The whole connection with Achilli extended over some months, but probably not a year. Achilli remained at Viterbo but a short time after this intercourse had taken place. I do not think he remained a year. And you never told these occurrences to any one but your confessor; not even to your mother?—No; I told her about six months ago that I was coming here upon a trial, but did not even then tell her that Achilli had been intimate with me. Would you have me publish my own sin? The curate caused me to come to him, and asked me whether I had known anything of Achilli. I said, “Why do you ask?” He said, that it would be for the glory of God and the honour of the Church.<sup>y</sup> Was that the confessor you had confessed to?—No; he is dead. He heard what I had to say. He sent me to Rome. I saw the grand vicar, and an English lawyer, and a Phillippine father. They said I must come here. I said all I have been saying here.<sup>z</sup> I have had my expenses on coming over here to this trial paid by the lady who brought me here, but I have not received even half a biocchi in money. That lady now lives with us. She is a Roman Catholic.

Re-examined by Mr. *Bramwell*.—After what happened with Achilli, I went to a convent for three years. I was not a nun, but went to try if I had a vocation to be one; if the Lord called me to it. My confessor advised me to go. He said I was in danger of becoming a disreputable character. I found I had not a vocation to be a nun. I afterwards married. I never had mentioned to me

<sup>y</sup> That she should tell the truth, of course; but not only, however, did Sir F. Thesiger, when he put the question, but Lord Campbell, in reading over the evidence, repeat the answer in a tone—the one of sneering sarcasm, the other, of grave suspicion—calculated to create the impression that the priest was suborning false evidence. Is this an illustration of a fair trial?

<sup>z</sup> Sir F. Thesiger's cross-examination lasted nearly two hours. It is impossible to imagine a more trying test for a witness—a female, and a foreigner—as to events occurring twenty-three years ago; but the universal impression was, that her evidence was strengthened, instead of being weakened, by the ordeal.

the affair with Achilli, except by the man, who said Achilli had told him of it.<sup>a</sup>

The Rev. Joseph Giotti (generally known as Father Vincent), was then examined by Mr. *Addison*. He said: I am a native of Viterbo, and am thirty-two years of age. I received part of my education at the Lyceum College, at Viterbo. Achilli was then professor of philosophy there, and was in priest's orders and a Dominican monk. What was his character? The *Solicitor General* objected to the question. Mr. *Addison*.—This is upon the charge that he had earned the reputation of a scandalous friar. Lord CAMPBELL.—What was his moral character? Very bad. His reputation was bad? Yes. By Mr. *Addison*.—Were these charges pending against him in the Bishop's Court? The *Attorney General* objected to the form of the question.<sup>b</sup> Mr. *Addison*.—Is there a court there called the Bishop's Court? Yes. Who presides in it? The grand vicar. Do you know of proceedings against him in that court? Yes. Have you acted as secretary? Yes. At the time of the proceedings? No.<sup>c</sup> I was at Viterbo when Achilli left that place: he left suddenly. Did he escape? I do not know. How did he leave? He was not found. What do you mean by his not being found? I cannot explain myself further: he was not found.<sup>d</sup> I was not there for a day or two before he left. The archives of the Bishop's Court, at Viterbo, were all burnt during the last revolution, in 1849.

Cross-examined by Sir *F. Kelly*.—Achilli left Viterbo in 1834. I was then about thirteen years of age. I have never seen him since he left. I received a subpoena to attend this trial in the beginning of last December, from Mr. Flannagan, an Irish priest. I was then and am now a priest at Broadway, Worcester. I have, since December last, been abroad, in order to obtain information about this business. I have seen the person who bore the name of Rosa di Alessandris.<sup>e</sup> I saw her once at Viterbo. I did not give nor offer to her, or any one else, money to give evidence about this business. I saw several persons when abroad with reference to this business. I did not induce any one

<sup>a</sup> What an illustration of the powerful effects of the sacraments of the Church is this poor girl's case! What a contrast to the instances adduced of females in this country who had similarly fallen; but, alas! had not been similarly reclaimed!

This witness was upwards of three hours under examination; and at its close, I heard on all sides exclamations to the effect that her evidence was unimpeachable. And this was the witness given up by Lord Campbell to Sir F. The-siger's cruel imputations of perjury!

<sup>b</sup> This is a specimen of the strictness with which the prosecutor's counsel scrutinized the evidence and objected in every possible way.

<sup>c</sup> Mentioned in the plea; one of the many witnesses Dr. Newman could not procure.

<sup>d</sup> This is an instance of the scrupulousness with which a good Catholic will swear, though it was set down as equivocation, or fencing. How could he swear that Achilli had absconded (which was what counsel were driving at) if not actually and personally cognisant of it, however he might infer it from the facts? A witness on oath is not to state inferences, but facts; and facts to which he can safely swear of his own knowledge. Such is the force of prejudice, that even educated persons conceived that this conscientiousness was "jesuitical." In Jardine's Criminal Trials will be seen similar instances of prejudice against priests, simply for answering circumspectly and scrupulously.

<sup>e</sup> So he could not state anything as to them of his own knowledge.

to come over as a witness ; but I did see many persons who are not here. I did not seek out any one. Persons came to me spontaneously as soon as they heard what I was come about. It is a small town, and my errand was soon known. I put myself in communication with the grand vicar at Viterbo, and with a Dominican priest, named Zoppi. I know the last witness. I saw her in Italy. I did not interrogate her. I saw her in company with her husband. Dr. Newman was the person who employed me to go to Italy. I was at Viterbo about fifteen days, and was occupied during the greater part of that time in seeing persons with respect to this matter. I was in Rome about seven or eight days. I saw there three persons with respect to their giving evidence. I believe none of them are witnesses.

Re-examined by Mr. *Bramwell*.—I saw Rosa di Alessandris at Rome. Did you endeavour to persuade her to come to this country to give evidence? I told her to do so. She refused. She was unwell. She was in the family-way. I saw the chief of the police at Viterbo. He gave me a document I produce. It is his private copy of the proceedings against Achilli. I made the copy of it. LORD CAMPBELL (to counsel).—How do you propose to make this evidence?<sup>f</sup> Mr. *Bramwell*.—I was trying to see how, my Lord. (To the witness) Has it any seal? It has the authenticated seal of the city. LORD CAMPBELL (with much acerbity)—If it were authenticated a hundred times it would not be evidence.<sup>g</sup> Mr. *Bramwell*.—I thought so, my Lord.

Sophia Maria Balisano<sup>h</sup> was then examined by Mr. *Badeley*, and replied in her native language, rendered by the interpreters.—I shall have been married eight years in November next, and my maiden name was Principe. I am not certain that I am yet twenty-eight years of age. Before I married I lived at Naples. I knew Dr. Achilli there : that is about twelve or thirteen years ago ; when about thirteen or fourteen years of age. I at that time frequented the church of St. Peter for prayer, and first saw Dr. Achilli in the sacristy of that church, who was sub-prior, when I went to make a small offering of money at an image.<sup>i</sup> The purpose for which I went led me into the sacristy. I went one day alone, and he shut the door of the sacristy. I wished to leave, but he prevented it, and dishonoured me. He used violence. I tried to get away, and struggled with him. I was before a virgin ; I then became pregnant. Before my confinement

<sup>f</sup> This was said with much acerbity, without waiting to see how it would be admissible.

<sup>g</sup> Here is a specimen of the technical strictness of the law of England. A copy of a public document (destroyed), made by a public officer, and authenticated by a public seal, is inadmissible. It is to be observed, that as the officer's was only a copy, the witness's (duly authenticated) was as good, there being no degrees in secondary evidence ; so that the officer's copy could not have been admitted ! How strikingly this shows the terrible difficulties a defendant encounters in such a case in obtaining legal proof.

<sup>h</sup> She is a middle-aged woman, belonging, like Giustini, to the humbler classes, and gave her evidence in a quick manner, with a good deal of gesticulation, and with every appearance of sincerity and veracity.

<sup>i</sup> The paper she identified, and which was afterwards shown to Achilli, in his cross-examination, related to a *pia unione*, in honour of the Blessed Virgin, one of the obligations being to visit her image in the chapels in question, for the purpose of praying for the divine mercy through her intercession. The giving of alms was only an incidental duty of the members, and did not necessarily lead them to the sacristy, nor out of the church. The Church has always encouraged

my father and mother went to Dr. Achilli ; I, however, was not with them. I remonstrated with him at the time, and said it was a harm and an evil he was doing ; but he replied, that it was no harm—that it was rather a good than an evil. I did not return from the church by the same door at which I entered. Mr. *Badley*.—Did he make you any presents ? Witness (with great contempt).—A bit of sweetmeat from time to time.† (Great laughter.) The thing produced great distress in my family ; my father, three years afterwards, died from illness arising out of it.

Cross-examined by the *Attorney General*.—I left Naples on the 16th of January, and my mother accompanied me to Civita Vecchia. Who desired you to come from Naples here ? A Dominican father named Scrouli. How did he discover that you knew anything of Achilli ? Because I went to the tribunals at Naples, and it was a well-known thing. How came he to ask you ? A trial took place in Naples about thirteen or fourteen years ago : he asked me if the thing were true or not ? In coming to this country everything I have required I have had, but no money, for it was not necessary. I came alone a great part of the journey, but it is a Phillipian father who has taken care of me, and I don't know what or how much he has paid. I have been in England about two months, and while in Paris met with the witness Giustini. We are now living together, and we have talked together about the business. Have you conversed with any priest since coming over about giving evidence ? No. When I went to put money under the image of the saint I saw Dr. Achilli alone. There were other people coming to pay, *but of Dominican monks none except him*. The church was open all day : it was closed at twelve, and re-opened at vespers. The sacristy was a first room ; there was a second where the vestments were kept, and there was a third where he sat. The door of the sacristy was in one way, and the entrance to these other rooms in another. I went to the sacristy to put down my name, but the money was paid at the end of the year, and this was done by many. I used to go at different hours, when I knew Dr. Achilli would be engaged on this particular business. It was in the morning, about nine or ten, when the act happened, and between November and December, but I do not remember the exact date. I went through the church to get to the sacristy, and there were many people in the church at the time. I went in and presented a little book, which he took and turned over. He then locked the door ; I felt some fear ; but he said, " Be quiet, or shame will grow out of it." I said, " You are a priest, let me go ;" he replied, " Oh, this is no sin." I did not call out ; nobody could have

confraternities (the origin of our Saxon " guilds," the precursors of corporations), which had originally a religious character, and are extremely ancient. There yet remains at Rome an inscription relative to the establishment of one ; and even as early as the reign of Constantine the Great, the Christians began to form such associations. The arch-confraternity of " *Raccomandate di S. Maria*," was founded in the thirteenth century. It was half-religious and half chivalrous, and in the fourteenth century rendered great services to the poor, and still exists ; and a modern traveller states it has one hundred and twenty-four foreign " filiations."

† A modern traveller says :—" Many of the lay confraternities came on Sundays and festivals, with sweetmeats for the sick." The practice of giving sweetmeats is common, it is clear, in Italy ; but an ignorant English jury, very likely, would think it strange.

heard me there, and I had not the strength, because he said to me, "You are all red in the face now. You had better wait and go out by the monks' entrance, and not through the church." The exit from the sacristy in that way was also locked, but with a sort of latch, and not a large key. Dr. Achilli showed me the way out, opening the door and looking if there was anybody about the entrance. I did not at first tell anybody of what had happened, but when I had increased so much in size that I could not conceal the fact, I told my mother; that was in February or March. I did not complain to him; my father and mother went. He knew that I was in the family-way, but denied that he had anything to do with it. Dr. Achilli resided in Naples a year or more after I spoke to my mother.

This terminated the cross-examination, and at past four o'clock the Court rose, reserving the re-examination till to-morrow.

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## SECOND DAY.

The LORD CHIEF JUSTICE took his seat at half-past nine. There was a delay of a few minutes on account of the witnesses not having arrived. Lord CAMPBELL asked Mr. *Lewin* very roughly—"Are you the defendant's attorney, sir?" "Why are not your witnesses here?" "They will be here directly, my lord." "Where are they, sir?" "In Manchester-buildings, my lord." "Why are they not here, sir?" "A clerk has gone for them, my lord; they will be here in a moment." "They ought to be here now! The Court ought not to be delayed!"<sup>k</sup> Shortly after they arrived—

Maria Giovanna Principe was recalled and re-examined by Mr. Bramwell.—The society to which I belonged was one which Dr. Achilli had founded. I paid money. Many others paid besides myself. We were not called by the name of any society. We received a paper like this (produced). I received it from Achilli. I do not know whether these payments commenced after he came. I never was at that church after he left it. I do not remember his leaving the church. A short time before he left my mother was aware of this circumstance. I went before the police at Naples about Achilli. I saw a commissary of police there. I made a statement, always repeating what had happened. My father and mother went there also. Achilli was not there. I never spoke to him in the streets. I visited him afterwards in the sacristy.

<sup>k</sup> The most appropriate comment on this ebullition is the observation of a barrister (a stranger to the contest), "What an affectation of haste!" The whole delay was about five minutes, and Lord Campbell well knew the "reason why." He was well aware that it was of the utmost importance to keep the defendant's witnesses from communication with the prosecutor, who was in the precincts of the court; and he also knew that there are no proper waiting-rooms for witnesses in Westminster Hall. Indeed, the absence of accommodation is disgraceful, and as detrimental to the administration of justice; and in such a case there seemed no reason to aggravate the difficulties of so arduous a case by this rough rebuke. It is a small circumstance in itself, but sufficient to show the secret *animus*. Separately these incidents are insignificant, their accumulation is suspicious. Straws floating in the same direction show the current clearly.

Cross-examined by the *Attorney General*.—I went before the commissary of police before I was delivered. That was when I was four or five months gone with child. Achilli was still in Naples at that time. He was brought before the police. He caused my father to be called before the commissary. I never met Achilli before the police. When Achilli went before the police I did not go. I was only once before the police. I think the event was repeated seven or eight times in the sacristy, between December and Lent. My mother knew of it at that time. Achilli did not leave Naples for some time afterwards, after I knew myself to be with child. I know why Achilli brought my father before the police. It was to say that my family had uttered this calumny against him, and that it was a calumny.

Re-examined by Sir *A. Cockburn*.—My father was called a second time before the police, after I had made the complaint. Nothing was done to him upon the complaint of Achilli. The commissary had informed himself, between the two complaints, whether my family was an honest one, and whether I was an honest girl. Afterwards he, hearing the truth, sent for my father, and then he gave the papers to another tribunal. My father was sent for a third time, and other times as the knowledge of the commissary increased. How did it end? The *Solicitor General* objected. Lord CAMPBELL ruled that the question was irregular. Sir *A. Cockburn*.—You went into it yourselves!

Signora Principe was then called and examined by Sir *A. Cockburn*.—I am the mother of the last witness. I knew of my daughter being in the family way, but I do not remember the month or year. My daughter was not then married. She was about thirteen or fourteen years of age. I learned from my daughter who was the father of the child. I saw her weak and ill. I inquired of her what was the matter. She told me everything. She had always conducted herself well up to that time. I have seen Dr. Achilli about this matter. I saw him after my daughter told me who was the father. He was in a procession,<sup>1</sup> and I and my husband took him aside. We called him into a house, and told him the affair. He was angry. He said it was not him. He said, "I am a priest." I said, "I will apply first to Divine justice, and then to the laws of my country." He then turned from me and said, "Go to the devil if you like, to me it matters nothing." I afterwards saw him again. He caused me to be called before the commissary of police. I went before the commissary. My husband was summoned with me. We both of us went. That was a few days after the conversation I had had with Dr. Achilli. Dr. Achilli was not present before the commissary. My daughter was afterwards taken before the commissary. Dr. Achilli, when he went to the commissary, stated that a low family had calumniated him. The commissary then sent for the father, wishing to know how the priest was involved in the matter. My daughter then went to the commissary, because he (the commissary) told us we were to take her before him, and we did so. He wished to ascertain the age

<sup>1</sup> Achilli swore this could not be true, because (as Sir *A. Cockburn* said he always would give a reason) it was not allowable to speak to a monk in a procession; and one of the jury eagerly seized hold of this, and nodded his head sagely. As if a person under such circumstances would stand on etiquette! Sir *A. Cockburn* put it far more truly, that this very incident showed the force of these feelings. And be it observed, that if all this evidence had been according to the atrocious invention of the *Attorney General*, "trumped up by ecclesiastics," they could hardly have framed so out of the way an incident, but have chosen a more usual and common manner of communication.—See note to his examination.



of my daughter. The commissary caused my daughter to confess everything that had happened. We were not condemned for the charge we had made against Dr. Achilli. Dr. Achilli left Naples after this—I don't know how long after, but we lost sight of him.

Cross-examined by the *Solicitor General*.—I am fifty-nine years of age. I was twenty-four or twenty-five years old when my daughter was born. She was born at Naples, and I lived there until this affair happened. I have never left Naples. My husband was a baker. I had no business of my own. There is nothing which will enable me to tell what year this took place with Dr. Achilli. I can only guess: it happened between thirteen or fourteen years ago. My husband died three or four years afterwards of a disease of the heart. I did not know Dr. Achilli before this circumstance, but I knew him by sight; I saw him preaching in all the churches. Dr. Achilli might stay at Naples a year or two after this occurrence. I cannot say how long he remained. I saw him in the procession four or five days after I knew of the pregnancy. The matter was before the police altogether three or four months. It was about a month after I saw Dr. Achilli in the procession that he applied to the police. Dr. Achilli did not preach in the churches for more than a year after the application to the police. I saw him when I first spoke to him, then I never saw him any more. My daughter lived with me three or four months after her confinement. I was then forced to send her to work. She went to work. I used to take her there and fetch her back. Mr. daughter married eight years ago; that was one year before my husband's death.

Antonio Russo<sup>m</sup> examined by *Serjeant Wilkins*.—I am a resident at Corfu, and am a carpenter. I know Garimoni, a tailor, at Corfu. One night in July, 1844, I was walking with Marino Vanice in the street of Viannello. We passed the house of the mother-in-law of Garimoni. As we passed the house, Garimoni opened the door. He called me in, and pointed out some one to me and my friend. He said, "Here is a Catholic priest, Achilli." I saw Achilli on the stairs near the apartment of the wife of Garimoni. This was about eleven o'clock at night. It was dark. I took hold of him and said, "What are you doing here?" He trembling answered me, "Nothing." I know it was Achilli, because Garimoni called out, and a lamp was brought. I distinctly saw his face. Garimoni was very angry, and scolded his wife. He was also very angry with Achilli. A police officer was called for by Garimoni. Achilli was trembling, but did nothing. When the light was brought, the constable not being there, Achilli stepped through, and escaped. He ran away like a horse. I and Vanice were afterwards called before the Court. It was eight or nine days afterwards. There were depositions taken.<sup>n</sup> I was examined. Garimoni was in England for some time—two or three months. He went away about a month ago.

<sup>m</sup> The witness was an honest-looking fellow, who spoke with every appearance of truthfulness.

<sup>n</sup> This commences the evidence as to the case of Garimoni; the next witness also refers to it. It will be seen from the affidavit of Garimoni (see *ante*), that he was prepared to be a witness for Dr. Newman, and was only prevented by the delay of the trial, which compelled him to return to Naples; the documents produced by the Corfu judge, Mr. Kirkpatrick, support the story; which is also confirmed by Achilli himself, and his own witness, the wife, especially by the inconsistency between his evidence and hers. And all this was put aside by the jury and the judge, simply because Achilli chose in terms to deny it!

Cross-examined.—I came over with Garimoni and lived with him here. I know Captain Lawrence, inspector of police at Corfu. Garimoni left this country, but I cannot tell when, because I also went away for one or two days. I went to Paris and Corfu, and then returned here. Before Garimoni and I left I had not heard of the arrival of Captain Lawrence. I heard that in Corfu. I did not tell Garimoni of it, because everybody in Corfu knew it.<sup>o</sup> When I came back I found Garimoni was gone, but I knew he was at Corfu. I have had the misfortune to be imprisoned at Corfu once. I was put in once for two or three hours for some youthful trifle. I mean to say I have only been imprisoned once at Corfu. I had beaten my brother, and was imprisoned again. Once more I have been accused, but not convicted. They said it was for robbery. I was three days, or two, or four, in prison for that. I cannot swear I have not been in prison four times, because when a child I was taken up. In 1840, 1843, 1844, or 1845, I do not recollect whether I was in prison. I was never in the house of Garimoni's mother-in-law before that time. I do not know whether Garimoni lived with his wife. When Dr. Achilli ran away like a horse I do not know where he went. I do not know that Dr. Achilli lived next door to Garimoni's mother-in-law. I never knew Dr. Achilli before that evening, not even by sight. After this fact I never set eyes upon him. I was called before the court at Corfu upon this business.<sup>p</sup> I have not said my deposition was taken in Corfu.

Re-examined by *Serjeant Wilkins*.—I was never charged with theft more than once, and it was not true. The trifles for which I was imprisoned were for being in the streets, or a little intoxicated. When Garimoni said it was Achilli in the house it was loud enough for Achilli to hear him. The lamp was put to his face by the wife of Garimoni, by the desire of the husband, who obliged the wife to bring the lamp.

Giovanni Patrini examined by Mr. *Badeley*, through an interpreter.—I am a jeweller at Corfu. I know Dr. Achilli. I have seen him at Corfu several times. I know Garimoni. I received communications from him as to his wife, which led me to observe the house of his mother-in-law. He took me one night to watch between ten and eleven. We saw a man come out; it appeared to be Achilli from his stature. I was acquainted with Achilli. I knew the wife of Coriboni; she was a woman of bad character; her name was Albina.

Sir *F. Thesiger* declined to cross-examine this witness.

Bocchiciampi examined by Mr. *Addison*.—I knew Achilli in Ancona in 1841. He sought my acquaintance, his object being to go to Corfu, I had a passport for Corfu, and he asked my permission to insert his name in the passport. I gave it to him. He went to the English consul. His name was inserted in it; he told me he could not get out of Italy for want of a passport; he had not money to pay his passage. Did you

<sup>o</sup> In the face of this fact (confirmed by the documents produced by the judges), the Attorney General ought to have shrunk from imputing false swearing; and Lord Campbell, in the case of Principe, admitted that the matter, having been brought forward publicly at the time, was very strong evidence of its truth; though he did not say so in this instance. Why did he not? He, however, did say one of the charges in this case was proved; yet the jury found it not proved!

<sup>p</sup> Why not? Sir *F. Thesiger* objected to the very kind of question which afterwards Lord Campbell was compelled to admit might be put; though here by his tone he encouraged the jury to object.—See Achilli's cross-examination.

get repaid? The *Attorney General* objected to the question. Lord CAMPBELL.—I do not see how it bears on the charges.<sup>3</sup> Mr. *Addison*.—At Ancona did you observe him with females at an hotel? The *Attorney General* objected; what charge is this upon? Sir *A. Cockburn*.—General immorality. Do you shrink from it? Lord CAMPBELL (sternly).—That is not fair! The *Attorney General*.—I am bound to take care that no question be irregularly put. Sir *A. Cockburn*.—There is a general charge of profligacy and unpriestlike conduct. Lord CAMPBELL.—But can you give evidence of such conduct in any part of the world? By Mr. *Addison*.—I have seen Achilli at Corfu. There was a woman living in his house, a servant. Have you seen him in a bad part of the town frequented by bad women? Yes. More than once? Yes. The *Attorney General*.—I really must interpose! Nothing is charged as to Corfu but Coriboni and Garimoni. Sir *A. Cockburn*.—You compelled us to give those names. Lord CAMPBELL would not allow the line of examination to be proceeded with.

Cross-examined by the *Attorney General*.—It was in 1841 or 1842 I accompanied Dr. Achilli to Corfu. That was after he had been confined in the prisons of the Inquisition?<sup>r</sup> Yes.

Mr. W. A. Reynolds, examined by Sir *A. Cockburn*.—I was employed at Zante and the Ionian Islands, by the government, for twenty-five years. I have retired on half-pay. I was collector of customs from 1842 to 1851. I remember Dr. Achilli being brought to my house at Zante, by Captain Ford and his family. He spoke to me upon the subject of establishing an Italian Protestant church in the island, in the autumn of 1844. He asked for my assistance and co-operation. He said he was taking a house for that purpose, and he did so in a few days. It was on the opposite side of the road, contiguous to mine. I assisted him in his object. Subscriptions were entered into. The chapel was opened in 1844. I attended on the first occasion. I was struck by the appearance of a woman of notoriously bad character, who acted as doorkeeper, and let us in. I knew her by sight from having seen her in Cephalonia, where she carried on the life of a common prostitute, her husband bringing persons to her. My dressing-room looked towards the back of her house, and I had friends living in the street in the front of her house. I often visited those friends. Her dress was very peculiar. She was always standing at the door, with her person much exposed. Everybody in the place knew what she was. Her husband was a chorus singer. He used to bring home friends to her. Her husband acted as Dr. Achilli's clerk, reading the Church of England prayers. I considered it my duty to call on Dr. Achilli the next morning. I told him I should be excessively sorry to deprive him of good servants, whom, I dared to say, he had taken on the recommendation of some friends; but I considered it my duty to inform him

<sup>3</sup> The object of this part of the cross-examination was to show that Garimoni had departed from a fear of Captain Lawrence's disclosures, as chief of the police. But see the affidavit of Garimoni (see *ante*). First, the prosecutor's lawyers protracted the trial so that defendant's witnesses had to leave; and then they try to blast their characters!

<sup>r</sup> Of course, the object of this was to counteract any awkward ideas about absconding, and excite the sympathies (or bigotries) of the jury. It was enough to turn the current of their feelings had it set ever so strongly against him. The very words, "prisons of the Inquisition," seemed always to have mysterious potency. Throughout this was the prosecutor's *cheval de bataille*.

of their bad character, and the impropriety of keeping them in his service. I told him everything I knew of the woman and her husband. He said he was aware already of her previous character; that he hoped she had become a second Magdalen; that he considered it his duty, as a clergyman, to continue his protection to her. I believe I rejoined he was free to give what charity he liked, but it was a very improper thing forcing her upon the congregation; and that if I saw either of them there again I would leave the chapel instantly, and I was convinced if I did so all the rest of the English would follow my example. I had my wife and daughter, and servant, living with me at that time. My house was opposite Dr. Achilli's, commanding a view of the room on his upper floor, which room was used by this woman as a laundry. The distance from my house to that room was, perhaps, fifteen or twenty feet. After that conversation, I several times saw Dr. Achilli in that room with that woman. I have seen him in his shirt-sleeves, and the woman in her open undress, working at her ironing. I could only see the upper part of his person.<sup>s</sup> Her shoulders were almost bare, as she usually dressed. She had no gown on then, as is common with that class of women. I have seen Dr. Achilli put his hands on her shoulders and on her bosom, talking and laughing all the time. I have seen it several times. I kept my blinds down on account of my daughters, it being an improper sight for them. The blinds were also kept down at the next house to mine. I saw Dr. Achilli after this, and expostulated with him. He said it was his duty, she being a Magdalen, to support her against all the world. LORD CAMPBELL.—Did you charge him with the indecent familiarities? I did not mention exactly all I had seen; but I told him he was too familiar with his servant, and that I had seen so much going on, that I considered it necessary to stop it. I advised him to send her and her husband away. I saw him after this time at my own house. I did not go to see him. He came to me. I requested my wife to leave the room. I then, in private, told him what I had seen, and I insisted on his sending them away. He became extremely violent; he never denied his connection with the woman. [*The Attorney General* (angrily).—“He never denied his connection with the woman!”] LORD CAMPBELL.—Did you charge him with it? I charged him with familiarities. LORD CAMPBELL (with an air of extreme indignation).—Sir, you surprise me! I am astonished that you should venture to make such an observation! You never charged him with criminal intercourse?<sup>t</sup> Witness.—I charged him with the indecent familiarities. Sir *A. Cockburn*.—Did he deny the familiarities? No.] My wife came down and the conversation was put an end to. After I had remonstrated with him, I went once through his bed-room. There was a bed with two pillows. I said, “It is a double bed.” I do not remember how he turned it off. There was a table

<sup>s</sup> This is important; it destroys the whole force of the reason Achilli gave for the improbability of the statement, and strongly confirms it. Achilli said it was impossible, for his house was higher than the witness's, so that the latter would have to look upwards; the effect of which would be precisely what the witness described—that he could see only the upper part of the person, to the waist.

<sup>t</sup> As if this were not necessarily implied in such indecencies! Let the reader observe the roughness with which, at a hint from the prosecutor's counsel, this most respectable witness was thus most unjustifiably assailed, before a jury already obviously prejudiced, and with whom this episode was enough to destroy the credit of the witness. No such ebullition occurred on any occasion against any one who appeared on the part of the prosecutor.

laid in his dining-room for two persons. I apologized for intruding, as I saw he was going to have a friend to dinner. He said it was only the table laid for himself and poor Albina," as he made her dine with him. I was out one evening when the band was playing near the Mole. There were some friends with me. My attention was called to Dr. Achilli being behind me with this woman leaning on his arm. I quitted the congregation. The other English residents did the same, on account of this business. The matter made much stir.

Cross-examined by the *Attorney General*.—I arrived here on the 15th February last. I left the Ionian Islands on the 6th February. I then went to Malta. I was collector of customs. The chapel had not been established many months. Coriboni's wife acted as door-keeper at the chapel on the first occasion only, and her husband only once acted as clerk. My windows had jalousies. The windows to Dr. Achilli's room were quite open. I saw these familiarities several times—five or six times, perhaps, or it might be oftener. They were always the same sort of familiarities. I, perhaps, saw them for five or six minutes. They continued after my remonstrances, the windows still open. Dr. Achilli was quite aware I had seen all this. I could see perfectly well. I had told him I could see, but they continued. I attended the chapel once or twice afterwards. I do not know about what time the last remonstrance was made. Pray, sir, has not Dr. Achilli remonstrated with you? With me? upon what? Upon anything I ask you, sir, has he not remonstrated with you? No; I cannot understand on what he should remonstrate with me. Why, sir, has he not remonstrated with you for your habitual intemperance? For my intemperance? certainly not. Mr. Reynolds, remember! I know I am upon my oath, sir. Did he never remonstrate with you? No! never! You never were intemperate? I am not an intemperate man. I might have been at a dinner party a little jovial, as other men are, but I am not in the habit of being intoxicated—all men are a little intemperate, perhaps, now and then. The *Attorney General*: I don't know that. Witness: Dr. Achilli never remonstrated with me upon the subject. If I had been intemperate I should not have served the Ionian government twenty-five years. Mrs. Read, who lived next door to me, had her blinds pulled down. She is dead, but Mr. Read is living, and in this country, but he is nearly blind. Dr. Achilli took me over his house to show it to me. His bed-room was on the third floor. I have talked to Lieut. Stoney about this matter. I think I told him that the reasons of

<sup>u</sup> An observable coincidence with the evidence of Patrini, who said that was her name. This was not mentioned in the charge.

<sup>v</sup> Yes; but Achilli swore the witness could not see; and if he truly swore according to his own belief, that would of course amply account for his being reckless about these familiarities, supposing him to have committed them. Therefore, this part of the cross-examination, pointing to improbability on the score of recklessness (on which Lord Campbell strongly relied, in discrediting this witness), quite breaks down. Indeed, the whole principle of such objections to evidence, otherwise respectable, is founded on a flagrant fallacy—the assuming that persons who are very lustful are likely to be very careful. As if passion might not run away with prudence! As if sensuality might not be supposed to besot the mind, and make it blind to consequences! As if all great crimes did not presuppose this sort of besottedness. Yet this palpable fallacy, pressed again and again in different forms, was the staple of Lord Campbell's charge, and the sole argument for disregarding a whole body of respectable testimony!

my suspicions were the two pillows to the bed and the two covers on the table. I know Captain Read. He was at the Ionian Islands. I have so far assisted in this case that I was asked by Messrs. Lewin, the attorneys of Dr. Newman, to go to Corfu and meet the gentlemen they had sent there. I was asked to go out on account of my knowledge of the place. I had told them what I knew, and they engaged me as a witness. I told them what I knew by letter from Malta in November or December last. I wrote to them in consequence of seeing the circumstance in the papers. Have you any relations of the Roman Catholic persuasion?<sup>w</sup> No. I found a Roman Catholic gentleman at Corfu, Dr. Scandeller, who had been written to. I know Parson Mitchell; he was at one time chaplain to the forces in Cephalonia. I don't know that he was engaged in this matter. I have not been paid, but expect to be paid after the rate granted to merchants or bankers.<sup>x</sup> I have not the least idea what it will be. I expect to receive 1*l.* a day up to this time. I brought down the witnesses the other day, and subpoenaed some of the Italian ladies.<sup>y</sup> I gave Mr. Stoney a subpoena at Plymouth, as I live in that neighbourhood. I gave the witnesses no notice that the trial was deferred. I did not see Dr. Achilli after I withdrew from the chapel. My wife was confined to her bed, and therefore did not see anything. A servant of mine witnessed these familiarities. She sat at the window, which commanded a view of the laundry. There were from seventeen to twenty-five English who attended the chapel. This letter (produced) is in my hand-writing. The *Attorney General* read the letter (addressed to Lieut. Stoney), as follows:—"Can you come up to give evidence in an action of libel, brought by Giovanni Achilli, our *ci-devant* parson, against Dr. Newman, in relation to his living with the wife of a chorus singer as his concubine, at Zante, about which I kicked up such a row. You cannot have forgotten it! Do you remember a conversation with Achilli as to my quitting the congregation, because he would continue to keep that woman with him? If you can speak to the point, Lewin will send you the sum we mentioned, to pay the expenses up and down, and for the stay in London; in fact, they are quite disposed to be liberal.<sup>z</sup> You need not be ashamed to appear in the case, for Lord Shaftesbury and several clergymen are summoned."<sup>a</sup> (To the witness) What did you

<sup>w</sup> And what if he had? Are Roman Catholics to be supposed by reason of their religion ready to suborn perjury? This unworthy insinuation is the substratum of the *Attorney General's* case.

<sup>x</sup> That is for his expenses, of course.

<sup>y</sup> Because he understood Italian. Lord Campbell made as much of this as the *Attorney General*; but what does it come to?

<sup>z</sup> The *Attorney General* well knew that this meant merely expenses, which a witness could claim; for his clients had clearly been in communication with Storey or they could not have got the letter. Was this a fair use of the license of counsel, to insinuate subornation of perjury, on such a misrepresentation?

<sup>a</sup> The *Attorney General* would never have dared, had he not known that he had judge and jury with him, to read this letter, which so thoroughly confirmed the witness's evidence when the explanation of it (of which the *Attorney General* was fully aware) was given. For if the witness's statements were not true, Stoney could have been called to disprove them. And, now, will it be believed that Lord Campbell discredited this witness in his charge, by referring to the insinuation, without alluding to the explanation—hinting that he had been concerned in getting up the case, without mentioning that it was

mean, then, by their being "disposed to be liberal?"—Only that he had said he would not come up without being paid his expenses. Lord CAMPBELL.—Who told you they would be liberal? I merely said so on my own authority.

Re-examined by Sir *A. Cockburn*.—How did it happen that you served three witnesses with subpoenas?—I happened to be at Mr. Lewin's office, and was going down where they were living, and was asked to hand them over. This Lieut. Stoney: you have known him several years? Yes. And he, as an officer, objected to come up unless paid his full expenses? Yes; he was a family man, on small means, and could not afford to come at his own expense. When did he say that? In Liverpool, in March. You had spoken to him, then, on the subject? Yes. Was he unwilling to come as a witness? Yes. And so in consequence of what had passed between you on the subject, and as he was anxious to be furnished with money, you wrote to him in the terms of the letter? Yes. Was any money sent to Stoney?—No.

Rosina Lavaney examined by Mr. *Addison*, through an interpreter in French.<sup>b</sup>—I am a Swiss, and now residing at Geneva as a nursery governess. I was servant to Mr. Reynolds at Zante, in 1844, and continued so until 1851. I returned to Geneva when her and his family quitted the Ionian Islands. I remember a Mr. Ford visiting Mr. Reynolds, and introducing Dr. Achilli to that gentleman. I went to the Protestant chapel the first time that it was opened, with Mr. Reynolds. I then saw the wife of Coriboni on her knees before the door, acting as pew-opener. Her husband acted as chanter or singer. I recollect Mrs. Reynolds being ill. I then sat in a chamber near hers, in order to be ready to attend her when called. I could, from that window, see into a room in Achilli's house, which was used as a laundry. The room in which I sat had Venetian blinds, which I used to have so closed that though I could see through them I could not be seen. I have several times seen Achilli with Coriboni's wife in that room. I have observed Coriboni's wife with her neck very bare, and Achilli in his shirt-sleeves. I have observed very great acts of familiarity between them. The wife of Coriboni being thus uncovered, I have seen Achilli several times place his hands on her shoulder and bosom. I have seen them talking and laughing together. I have seen them walking together in the public streets of Zante towards evening. I never saw Coriboni and his wife together. The blinds in Mr. Reynolds' house, looking towards Achilli's, were kept closed, because Mrs. Reynolds was ill, and could not bear daylight. I do not know of any other reason for the blinds being closed.<sup>c</sup> The blinds were not always kept closed after Mrs. Reynolds recovered.

Cross-examined by the *Attorney General*.—I came over from Geneva about a fortnight ago. I knew about coming two or three days before I came. I heard about it from Mr. Reynolds, who wrote to me. I saw Mr. Reynolds after I came here. I have been living with Madame de Plume, whose husband has a government office. The expenses of my

only casually, and in consequence of seeing the case in the newspapers; and, above all, Lord Campbell never adverted to the obvious confirmation of the witness's story, by the omission to call Stoney, who, if he did not know it to be true, could and would have been called to contradict it!

<sup>b</sup> The witness was an ingenuous-looking girl, who gave her evidence with equal modesty and simplicity.

<sup>c</sup> No other reason would be given her; because (as she said) it was not decent to mention the other matter to her.

journey have been paid for me, but I have not received any money. Mr. Reynolds paid for me. I quitted the Ionian Islands at the same time as Mr. Reynolds, and came with him to Lyons, where he left me for London, and I went to Geneva. Achilli and Coriboni's wife used often to be together in the public streets, where every one could see them. Her husband lived with them. How often did you see these familiarities? Several times. Were you very much shocked?<sup>d</sup> I was much disgusted. Did you always turn away when you saw them? I did, after I had seen that Achilli and Coriboni's wife acted so. I could only see what took place when they were before the window; had they retired into the other part of the room I could not have seen them.<sup>e</sup> Used he to begin the moment he came into the room? I do not know, for my window was not opposite to their door.<sup>f</sup> Only one window of Mr. Reynolds' house commanded this room of Achilli's house. These familiarities continued several times. Did you mention them to any one but Mr. Reynolds? I mentioned them to Mrs. Reynolds and the young lady (the daughter), but to no other person, although I heard other persons talking of them. Miss Reynolds was then fifteen. I am now twenty-eight. What, did you mention these familiarities to a young girl of fifteen? She used to see it herself. She was disgusted with it the first time she saw it. I do not know how often she saw it, for we ceased to speak of it, as it was not decent.

Re-examined.—I am a Protestant. The blinds in Mr. Reynolds' house were Venetian blinds, of such a nature as one could see through them without being seen. The blinds were kept shut because it was hot. I heard many persons talking of this affair.<sup>g</sup>

Vincenzo Barga examined by Mr. *Badeley*.—I have lived in Corfu twenty-three years. I am an armourer. I recollect Achilli coming to Corfu as a Catholic priest. He appeared as a Protestant. Four or six days after he came he declared himself a Protestant. I do not know whether he was a Protestant or a Catholic. I knew Coriboni and his wife. They lived together. I have seen Coriboni's wife in public as a bad woman, in which character she was known and esteemed in public. The *Attorney General* objected. How was this material? Sir *A. Cockburn*.—If she were of general and notoriously bad character, and he nevertheless persisted in retaining her after remonstrances, and though he was a minister of the gospel—surely this would tend to show that he kept her to satisfy his desires. Lord CAMPBELL.—It cannot be necessary. Mr. *Badeley*.—Have you seen Achilli with her? I have

<sup>d</sup> This was said in a tone of sarcasm—very ungenerous towards a girl evidently innocent and ingenuous.

<sup>e</sup> Here it will be observed how this coincides with Achilli's own account of the relative position of the rooms preventing persons seeing into his house, except looking in an upward direction.

<sup>f</sup> This is important, as answering the suggestion relied on by the *Attorney General* and Lord Campbell, as to the improbability of such indecency; for in Achilli's house it would appear as if the blinds were closed.

<sup>g</sup> The *Attorney General*, conscious how monstrous and infamous it would appear to charge the witness with perjury, artfully endeavoured to show she might have sworn falsely, though not wilfully, by reason of her having seen some one committing these indecencies, and then having been induced by Reynolds to believe it was Achilli. Strange sophistry, this! Does the *Attorney General* think this would have been any the less perjury to swear to something told her by another, and which she did not know herself! Because she swore she saw Achilli.



seen Achilli enter the house where she lived. I cannot say how often. Achilli left in 1843. Coriboni's wife and Achilli were said to have left Corfu together. I do not know it of my own knowledge. I lost sight of them both at the same time.

Cross-examined by the *Attorney General*.—It was Dr. Achilli's own house, was it not? I do not know. It was next door to the house of the mother-in-law of Garimoni.

Re-examined by Sir *A. Cockburn*.—When did you first become acquainted with the wife of Coriboni? I knew her as a public dancer at Corfu. When did she come first? The *Attorney General* objected. Sir *A. Cockburn*.—Surely it is a regular question; he has already said he had seen Achilli enter the same house. Lord CAMPBELL.—This is a case in which, as I am anxious to arrive at the truth by all means, I will not stop the examination. Sir *A. Cockburn*.—When did Achilli come to Corfu? I cannot say exactly. Was it after Coriboni's wife had come? I believe it was afterwards. Do you know if Coriboni's wife resided all the time in the same house as Achilli? So long as I knew her she was living in the same house. Was that Achilli's house or her husband's? I do not know.

The Rev. George Horatio Hadfield examined by Mr. Serjeant *Wilkins*.—I am a clergyman of the Church of England, now resident at Whitchurch, Hampshire. In August or September, 1846, I was appointed principal of St. Julian's Protestant College, Malta. After the vacation of 1847 I returned to Malta in September. I am well acquainted with Achilli. On the 19th July, 1847, he was appointed Italian professor of theology in that college. He came to Malta on the 11th December. Before he arrived, a priest, named Keosse, who had been a Catholic priest, had brought certain charges against two persons named Leonini and Saccares, who had been priests. The *Attorney General*.—Were these charges in writing? I have the statement here. Mr. Serjeant *Wilkins*.—Were they Protestants? They professed to be Protestants; they were connected with the college. They were residing in a house connected with the college as missionary students. I communicated with the committee of the college in London several times on the subject of these accusations, which had gone to London before. I afterwards, at their request, inquired into these charges. The earl of Shaftesbury is the chairman, and the earl of Waldegrave is another member. In consequence of these charges a meeting took place at the mission-house at Malta, on the 28th of December, in the presence of Achilli and the accused priests. At my request, Mr. Bryan, the vice principal, took the chair. Achilli was present. Keosse was then called upon to state his charges against these priests. Leonini was charged with having committed adultery with a Maltese lady. Saccares was charged with sleeping out of the mission-house, and having frequent intercourse with women of bad character. Achilli had lived in the same house with these persons during the same year. Keosse had not lived with them. The priests were called upon to answer the charges, and denied them. The examination was written and sent to London. I have here the depositions. As they denied the charges the case was for the time held not to be proved. Achilli called Keosse a calumniator. On the 5th of January, notice was given to Keosse either to substantiate his charges or to withdraw them. As long as they rested merely upon his authority the charges were not believed. Some time after that a Dr. Bonavia made a statement to me, which I mentioned to Dr. Achilli. Dr. Bonavia stated that he had heard from Saccares similar statements

to those which Keosse stated that he had made to him. I gave this statement to Achilli on the 16th of February, 1848, telling him at the same time that I was going to send it to the committee in London. On the 19th of February, 1848, I received from Dr. Achilli this letter (which was read, as follows):—"I have need of the Rev. Mr. Saccares for an important mission, and he starts immediately for his destination, consequently he does not any longer belong to the college." I believe that Saccares left upon that day. I received no information of that between the 16th and 19th, that he was going away. I left Malta for England on the 24th of April, 1848. Dr. Achilli came to London soon after. Was he dismissed? Our notion was he had removed himself; that he had resigned his position in the college. In obedience to directions from the earl of Shaftesbury I dismissed Leonini from his position in the college. Keosse continued to teach after I left Malta, but has since returned to the Church of Rome. Dr. Achilli was well acquainted with the charges brought against Leonini and Saccares.

Cross-examined by Sir *F. Thesiger*.—The students in that department of the college to which Dr. Achilli belonged were Italian priests, who had seceded from the Church of Rome. Including Dr. Achilli himself, their number varied from three to seven. Keosse was also there as a seceding priest, and in order that he might teach Turkish in some of our other institutions he lived in the same house; but he did not live there when Achilli was there before. Achilli had not left Malta before I had; but he came to England soon after me.<sup>h</sup>

The Rev. Alexander Watts examined by Mr. *Addison*.—I was formerly clerical secretary to the committee of the Malta college. I recollect the charges against Leonini and Saccares coming to England. I had a conversation with Achilli about it. He was anxious that I should suppress the whole of them. He insisted that I should deliver them to him, and not bring them before the committee, as he said that it would not be of any use to do so. I would not do so; the charges were laid before the committee, and they decided upon investigating them. The investigation was first entered upon by the principal, vice-principal, and Dr. Achilli, who formed the council of the college. Their report was sent home to London; the committee then requested the bishop of Gibraltar to assist in the investigation. His lordship declined, because Saccares, one of the principal parties accused, and who was a witness, had been sent away by Dr. Achilli. Subsequently the committee, taking into consideration that Saccares had been sent away from the island by Dr. Achilli while those charges were pending, upon some mission of his own, and without the consent of the committee, determined to remove him, and decided upon closing that branch of the institution over which he presided. The resolution to that effect was dated May 8, 1848. The *Attorney General*.—Where is it? (Put in and read.)

"Resolved, that it is not desirable, under existing circumstances, to keep up the Mission House; and that notice be given to Dr. Achilli and the other priests, that their professorship ceases, and that the establishment for ex-priests will close in a few months."

September 26, 1848, Dr. Achilli addressed a letter to the earl of Shaftesbury, which he requested might be laid before the college committee. (The letter was then put in and read.) "I am about leaving London to

<sup>h</sup> See as to this matter Achilli's own affidavit, disclosing the publication of these proceedings.

go to my mission. I have hitherto hoped that you and the other members of the Maltese college committee would not allow me to leave England so embittered, as I assure you, that although separated from the college, I still equally love you in the Lord ; it is only a misunderstanding for which you have got angry with me. I did not know that I was forbidden to come to England, and thought that the employment you confided to me was serving you and the cause of religion. But this is to be as God has willed it. I think, however, that God forbids that there should be any ill dispositions between us. Therefore, if you believe yourselves offended with me, I beg your pardon ; while on my own side, I shall willingly forgive any offence that may have been offered. I have suffered much, without having on my own conscience anything to reproach me. Have I transgressed your laws, or failed in my duty ? Do not allow me to leave this country, perhaps for the last time, without receiving from you one little word of friendship. Even a servant, when no longer wanted, has a character given him, and his month's wages paid him ; but it appears you are sending away your servant without even a letter, or paying him his stipend, which was fixed to be paid by the year ; and I have only received it for eleven months. I beg you to interpret this to the committee."

This letter was laid before the committee, and an answer sent, Dec. 6, 1848. (Put in and read.)

"Malta College Office, 3, St. James's Street,  
December 6, 1848.

"Rev. Sir,—At the last meeting of Committee, held on the 15th November, 1848, Lord Ashley, at your request, laid before the members present your letter addressed to his lordship, dated September 26, 1848. The Committee request me to send you the following reply. When you arrived in England in June last, after being absent a whole month from your official situation and important duties in the Malta College, without communicating your intention of leaving, either to the principal or to the Committee in London, I expressed to you the dissatisfaction which the Committee felt with your proceedings in these respects, especially as you had been previously informed by them that they did not wish you to come to England that summer on the business of the College. I then asked you to attend a meeting of Committee to be held next day, that you might have an opportunity of offering any explanations which you might think proper. You neither attended that meeting nor any other subsequent ones since your arrival in England. You have addressed no letter of explanation to the Committee, except this short note, in which you desire to be informed in what respects you have failed in your duty, and request some recommendatory letter before leaving England, expressive of the Committee's Christian regards. The Committee are not a little surprised at the tenor of your communication, after they have so fully expressed their views of your unjustifiable mode of acting, both as regards your deserting your post at Malta during term time, as well as in respect to your summarily removing, upon your own authority, Signor Saccares from the College, and sending him upon some mission of your own into Sicily. You did this, too, at the very time when you knew that the most serious accusations of gross immorality were brought against Signor Saccares, then resident in the Mission House. You thus defeated the ends of justice, or deprived the accused, if innocent, of the opportunity afforded of clearing his character before the world.

“ I regret to add, that the Committee have had additional cause of dissatisfaction with you since your return to England. I have before me a letter from one of our subscribers, in which, before paying his subscription, he requests me to give him some explanation of the injurious statements made by you to him respecting the Malta College.

“ You conclude by mentioning that the salary paid you was only for eleven months instead of for a year. You forget that the Committee did not engage your services by the year. You were paid quarterly, as all the other officers of the Institution, at a certain rate per annum. When I gave you the amount of salary due, according to the terms of the resolution of the Committee, held on the 19th of June, 1848—including payment for the month you were absent from Malta without leave—you expressed yourself perfectly satisfied in signing the acknowledgment.

“ It has been with sincere regret that the Committee have felt themselves obliged, for the above reasons, to withdraw their confidence from you, and to remove you from the advantageous situation they had conferred on you in the College. In that office you had an opportunity of rendering most important service to the cause of Italian reformation, by preparing missionary agents, so much wanted to occupy the different fields of labour which might be opened up.

“ I remain, yours faithfully,

(Signed)

“ ALEX. WATT, Secretary.

“ To Dr. Achilli.”

Cross-examined by the *Attorney General*.—You have read the resolution laid on the table on the 8th May, 1848, by the earl of Harrowby, for consideration? (It is read, as follows):—

“ Resolved,—That it is not desirable, under the altered circumstances of Italy, to keep up the existing Mission House at Malta, and that notice be accordingly given to the Italian Theological Professor, Dr. Achilli, and to the other inmates of the Mission House, that the Professor's appointment will cease, and the establishment for ex-priests will be closed in three months from the date of the receipt of this communication.”

Will you read the minute of the final resolution taken by the committee on the 24th May, 1848. (It is read, as follows):—

“ After prayer, the committee proceeded to consider the resolution submitted to the last meeting, by the earl of Harrowby, respecting the discontinuing of the Mission House at Malta, and the termination of Dr. Achilli's appointment as Italian Theological Professor.

“ This resolution was unanimously agreed to, and the secretary was instructed to send a copy of it to Dr. Achilli.”

Cross-examined by the *Attorney General*.—I recollect Achilli coming to England after the resolution of the committee with respect to the closing of the Mission House. Was there afterwards a resolution of the committee of the 19th June? Yes; when a letter was read from the bishop of Gibraltar, in which his lordship expressed his great dissatisfaction with the conduct of Achilli with respect to Saccares. The *Attorney General* (angrily).—I object to the witness stating the contents of the bishop of Gibraltar's letter. I simply wanted to know the resolution to which the committee came. The witness then read the following resolution of the committee:—“ The committee, having taken a review of the whole conduct of Dr. Achilli, in connection with the statements of the bishop of Gibraltar, came to the following resolution:

—‘That Dr. Achilli having voluntarily abandoned his post at Malta, during term time, without the permission, and even contrary to the expressed wishes, of the committee, as contained in their letter of April 18th, resolved, that the engagement between the committee and Dr. Achilli must be considered as virtually terminated by his act.’” That resolution was communicated to Achilli. The *Attorney General* objected that only the resolution was to be received. Sir *A. Cockburn*.—I submit that the statements of the bishop of Gibraltar must be read, as referred to in the resolution. The *Attorney General* eagerly objected. Lord CAMPBELL.—I think the whole forms one document. The *Attorney General*.—I asked only for the resolution. Lord CAMPBELL.—The statements referred to are a kind of preamble, and form part of the resolution. The *Attorney General*.—The resolution was sent to Achilli, not the reasons, which are not evidence against him. Sir *A. Cockburn*.—What I ask for is matter of recital, and leads to the resolution; without it we have not the whole of the resolution. It implies that, in consequence of what was stated by the bishop of Gibraltar, the resolution is come to. Lord CAMPBELL.—Does not the resolution begin at the words, “The committee having taken a review,” &c. Sir *A. Cockburn*.—The question is, on what grounds Achilli was dismissed; my learned friend wants to confine me to the resolution, but my object is to show that the committee took into consideration a great deal more than they thought it necessary to say in the resolution. Lord CAMPBELL.—I think that as the resolution refers to the bishop’s statements as to matter of recital, the whole must be read.<sup>1</sup>

The Earl of Shaftesbury examined by Sir *A. Cockburn*.—I was chairman of the Malta Protestant College. Complaints of Dr. Achilli’s conduct with respect to Saccares were forwarded to the committee. Accusations of immorality against Saccares and Leonini had been previously forwarded to the committee, and this matter was referred to the authorities of the college for investigation. One of these authorities was Dr. Achilli himself, as the head of the department of ex-priests. It became his duty, in conjunction with Mr. Hadfield, the head of the college, to conduct an inquiry into the conduct of these persons, Leonini and Saccares. We heard afterwards that Dr. Achilli had sent Saccares away. We received a letter from the bishop of Gibraltar, and on the receipt of that letter, it appeared useless to continue the inquiry when the principal party had been sent out of the way, to avoid examination. The *Attorney General* objected. Lord CAMPBELL.—The resolution speaks for itself. Sir *A. Cockburn*.—Did Achilli come to London in consequence of a summons from you? No. Did he anticipate that summons by coming to London? Yes. Had he any authority from you to leave his post, and come to London? No. On his arrival did he state reasons for leaving Malta? Not that I am aware of; except that he said he came on business of his own. Before his arrival you had acted? Before his arrival we had come to the resolution to break up the whole establishment, believing that the evil could not be eradicated.

The *Attorney General* again objected to entering into the reasons of their dismissal; it was recorded in the resolution already produced

<sup>1</sup> Let the reader observe this; the reasons recited in a resolution of a voluntary society are to be read (and rightly and reasonably) as forming part of it; but afterwards, the Lord Chief Justice refused to receive the reasons recited in a judgment of a regular court of justice, of a sovereign and independent prince!

that Dr. Achilli's engagement was virtually terminated by his own act; and nothing was there said as to his having sent Saccares out of the way. Sir *A. Cockburn*.—Though that was not adverted to, I will show that it was taken into consideration. Lord CAMPBELL.—We cannot ask about what was passing in the minds of the committee. Sir *A. Cockburn*.—I propose to prove what passed at the meeting of the committee. Lord CAMPBELL.—The resolution with its preamble states the reasons of the dismissal. Sir *A. Cockburn*.—They are not all stated. The question is what they were. Lord CAMPBELL.—We must take them from the resolution. Sir *A. Cockburn*.—There might be many grounds on which they were unanimous, but in order to avoid exposure they may only have stated one of them in the resolution. Surely, when afterwards a question arises as to what they were, the resolution is not to be conclusive? The question is on what grounds the committee really proceeded. Lord CAMPBELL.—The resolution states them, and you cannot go further and enter into other grounds. Sir *A. Cockburn*.—Then we are shut out from proof plainly applicable to the issue.†

Dr. Bonavia examined by Mr. *Bramwell*.—I was teacher of Latin and Italian at the college of Malta. I was there teaching for the last three years. I remember Achilli being there; he resided at the same house with Leonini and Saccares. I had some conversation with him respecting the charges which were made against them. I asked him if he had heard the reports which were circulated with respect to them in the town? He said he had. I next asked if he believed them? He replied that he did not. Did he express any opinion as to the propriety of what had taken place? So far as I remember he did not express any disapproval. Did he use any expression as to its being wrong? The *Attorney General* objected. The witness continued.—I asked if he thought it was judicious to permit the visits of a married lady who it was said used to come from Valetta to visit Leonini at the Mission House? He in return asked me if I thought it was wrong? I said it was not judicious, on account of the reports which were circulated in the town, and that it was especially injudicious to allow the lady to be admitted to Leonini's own room. He asked again whether there was any harm in permitting such visits? I said I thought it was wrong, Leonini being a bachelor, and it might lead to bad results. He then got into a passion, rose from his chair, and said, "You are too scrupulous because you are married; if you were a bachelor perhaps you would do worse than Leonini; it would be better for you to mind your own business, and not to meddle with our affairs, if you wish to continue in our friendship." He then left me in the room, and went to join his companions, who were playing cards.

Cross-examined by the *Attorney General*.—Have you ever told this to anybody before this? This is the second time I have ever mentioned this conversation. What was the first? I told it first to Mr. Lewin (the defendant's attorney), after my arrival in London. I have been five months in London upon this affair. Sir *A. Cockburn*.—We wanted to try it four months ago, but were prevented. Witness continued.—I am a member of the Maltese bar, but I do not carry on the profession,

† Which was, that Achilli had been dismissed for reasons the committee could not get themselves to describe. The effect of the decision was, to exclude a great deal of evidence contained in the minutes of the committee (portions of which they had published), and referring to other reasons they did not think proper to publish.

being teacher of Italian in the Maltese College. The *Attorney General*.—Did you go to Mr. Lewin, or he come to you? Neither. How came you to mention it? After I had heard of the case, I thought it my duty, being called upon to come here, and say all I knew for the sake of truth. Who advised you to come here? Am I bound to answer? Lord CAMPBELL.—You are. Witness.—It was Dr. Bryan, vice-president of the college.<sup>k</sup> The *Attorney General*.—How did he know of the conversation between you and Dr. Achilli? No one knew.

Re-examined by Sir *A. Cockburn*.—How came Dr. Bryan to send you? I do not know. Did you mention to him that you had conversations with Leonini and Saccares? Yes.<sup>l</sup> Sir *A. Cockburn*.—My lord, I have a brief full of the evidence of these persons.<sup>m</sup>

Harriet Harris,<sup>n</sup> by Mr. *Addison*.—I am aged twenty-two. I am now in service. In March, 1850, I was engaged as a servant by Dr. Achilli, who was then living in Northumberland-street, Strand. He had just taken a house in Shaftesbury-crescent, Pimlico. I went there in the morning. I found there a Mr. Castellini, who was making the drawing-room carpet. Dr. Achilli arrived soon after in a cab. Mrs. Achilli did not arrive until a fortnight afterwards. I got dinner ready. Dr. Achilli was in and out of the kitchen during the day. In the evening, Dr. Achilli came in and took very improper liberties with me. There was then no one in the house but ourselves. He put his hand round my waist. He kissed me. I did not consent, but got away from him as soon as possible, and went into the back kitchen. He followed me there, and told me what he had gone through when he was abroad, and amongst other things he said that he had been imprisoned for six months. When he was in the back kitchen, he attempted to put his arms round my waist and my neck, and to kiss me. He then went out, I think. He came in after I went to bed, I think about twelve o'clock. Nothing more took place that evening. He made several attempts subsequently to put his arms round me, but I got away from him, and he kissed me twice when I was not aware of it. I mentioned this to my aunt, Mrs. Cadogan, and to Mr. Castellini. These attempts all took place before Mrs. Achilli came back. He did not repeat them subsequently.

Cross-examined by the *Solicitor General*.—I had been in service six months before I went to Dr. Achilli's house. I remained in Dr. Achilli's service three months. Mrs. Achilli came home about a fortnight after I went, but I never told her of these liberties. Mrs. Achilli found fault with me about the kitchen being dirty. I afterwards gave her warning. I subsequently asked her to let me stay, but she refused.<sup>o</sup> I re-

<sup>k</sup> Why should he have mentioned it to any one? The ex-priests had all removed, and there was an end of the affair. The conversation only became important on account of the present proceedings, and the issue raised on them; and then naturally it would recur to his recollection. Yet, not only the *Attorney General*, but the Lord Chief Justice seized hold on this slight circumstance to discredit this most respectable person's evidence!

<sup>l</sup> This of course explained Dr. Bryan's sending the witness without his knowing the particular conversation above deposed to, which would transpire, probably, upon examination by defendant's attorney.

<sup>m</sup> Including the evidence of Kaossi, who, however, could not be got hold of: another instance of the difficulties of Dr. Newman.

<sup>n</sup> A very pleasing, modest-looking girl.

<sup>o</sup> Mrs. Achilli afterwards states the reason, which casts no discredit on the girl. She was said to be dirty: she did not look so.

ferred a lady afterwards to her for a character ; she said she could not give me a character for cleanliness, and she said two or three other things about me which I did not think right. My aunt was the first person who spoke to me about coming here to give evidence. I afterwards saw Mr. Lewin. These things never took place anywhere except in the kitchen.

Re-examined.—Dr. Achilli often came into the kitchen.

Mrs. Cadogan.—Harriet Harris is my niece. I remember her complaining to me of what Dr. Achilli had done to her during the first week that she was there. She complained that he had used indecent liberties towards her.

Cross-examined by the *Attorney General*.—When my niece spoke to me I did not at once go off to Dr. Achilli to remonstrate ; I did not mention the matter to Mrs. Achilli after she had arrived. I first mentioned it to Mrs. Castellini, about a month after my niece left. I saw Mr. Lewin, the lawyer, about this business about six weeks ago.

Re-examined by Sir *A. Cockburn*.—When my niece came to me I said I understood that Mrs. Achilli was coming home in a few days.

Jane Legge<sup>p</sup> examined.—I was in the service of Dr. Achilli about ten months ago. I was in his service seven or eight months altogether. I was servant of all work. He then lived at Shaftesbury-crescent, Piccadilly. During the time I was in his service he took liberties with me. He began to do it about three months after I had entered his service. I gave notice to leave, and he asked me to stop on. I did so. He had before that kissed me two or three times, but nothing else. He took other liberties with me a day or two after that on which I had consented to stop. He came up to me when I was in my mistress's bedroom, and took liberties with me. Eventually he was too intimate with me. This happened several times, and I ultimately became pregnant. I stayed about four months after that. I left because my mistress gave me notice to leave. I afterwards got another place, for which Mrs. Achilli gave me a very good character. I was afterwards delivered of a child, which died. I saw Dr. Achilli about a fortnight before I was confined. I did not speak to him about my situation, because I was not with him more than a minute or two. While I was at Dr. Achilli's, a friend of his, Mr. Augustini, was staying there. He also was intimate with me. I never told Dr. Achilli. I am now stopping with Mrs. Johnstone, Vauxhall-road, where I have been awaiting this trial. I was before that living with my sister, Mrs. Logan. I saw Dr. Achilli there, on the occasion of his coming to see a gentleman who lodged at my sister's house. That was after the death of my child. I never asked him for anything ; he never gave me anything. I have since seen him at Mrs. Logan's, and have spoken to him about coming here. About five weeks after the death of my child, I told him of my subpoena to give evidence on this trial. He said that I had no need to go. I told him again about a week after, that I had to go ; and he said to me that I was to shut the door in the faces of those who came to subpoena me.

Cross-examined by the *Solicitor General*.—I had lived at two places in London before Dr. Achilli's ; but, subsequently to that, I had been in the country for two years. Mrs. Achilli never complained of my conduct with regard to men. She only said that she would not allow a young man to come to see me. I did not meet a man outside the house.

<sup>p</sup> A girl who appeared to speak truthfully.



After she had spoken to me, I received a young man, a friend, in the house. She came down stairs one night after her return from a party, and found a young man in the back kitchen. He had been in the house about two hours. She did not then tell me that I must leave her service. The *Solicitor General*.—How many men were you in the habit of seeing while you were at Dr. Achilli's? I am not obliged to answer that question. Lord CAMPBELL.—You must answer. I had no men come to see me except that young man and another friend of mine, who came to see me once or twice. The *Solicitor General*.—Then you have told us of Augustini besides; that makes three men. Any more? I have not told you that I had anything improper with the other two. Lord CAMPBELL.—Did they come to court you? Yes, sir. (Laughter.) Mrs. Achilli never found fault with me, except with regard to that young man. She said she would not allow him to come in the evening, but that he might come in the morning if he liked. She never saw anything wrong in me with regard to any man in her life. The *Solicitor General*.—Did you ever, after she had found fault with you about the young man being behind the door in the kitchen, say one word about Dr. Achilli having taken liberties with you? No, sir. Do you remember her one night telling you to go to bed, and that she afterwards watched, and found that you had opened the area door, and had gone out? Yes; I went to speak to my friend at the door; nothing more. Was it a man or a woman? A man. Did she not tell you that you must quit her service? No, sir.

Sarah Logan.—I am the wife of John Logan, an engineer, who lives at 11, Shaftesbury-crescent, Pimlico. I am the sister of the last witness. She was delivered at my house. Dr. Achilli came to my house to take lodgings for two friends. Subsequently a clerk from Mr. Lewin's came to inquire about my sister. I sent to inform Dr. Achilli about it. He came to me one day, in the evening, and said that Mrs. Castellini was employed by Dr. Newman's party,—that *Dr. Newman was a very bad man,*<sup>q</sup> and he hoped to have him sent to prison. He said if the people came again I was to shut the door in their faces. I said it had been a great expense to us having to keep my sister, particularly as the baby had died in our house. He said, "Yes, yes." He said nothing more, except that he would come again, and repeated that we were to shut the door in the faces of any persons who came to serve us with subpœnas. Two or three days afterwards he came again to us. We had then been subpœnaed. We showed him the subpœnas, and he said he thought they would not compel us to go. He said that he thought my sister Jane had nothing to say against him. I said, "Of course, sir, you know what passed between you and Jane." He made me no answer. Nothing more was then said. Some days after he came again, about an anonymous letter which had been sent him about my sister. It said he ought to be ashamed to draw poor domestics into trouble, and not bear them through it; and that unless he sent 5*l.* to defray all expenses, he should further hear of it. I said that I did not know who had sent it. Dr. Achilli said that it must have come from the same parties as the subpœnas.

Cross-examined by the *Attorney General*.—Dr. Achilli talked to me in English on every occasion.<sup>r</sup> I cannot tell from where my sister

<sup>q</sup> The reader will remark this.

<sup>r</sup> When examined, it will be observed, he said, he could not speak English well enough; and claimed to be examined, through an interpreter, in Italian.

came to my house. I believe that it is owing to Mrs. Castellini that we were subpoenaed. I did not wish to come here to be mixed up in the business,\* and therefore I said to my sister, on seeing her talking to Mrs. Castellini after we had received our subpoenas, "I had rather spit in her face than talk to her." (Laughter.) I did not wish my sister to have anything to say to her.

Re-examined by Sir *A. Cockburn*.—This was after I had seen Dr. Achilli.

Sarah Wood<sup>†</sup> examined by Mr. *Bramwell*.—I am aged 19. I am now living with my parents at Windsor. I have lived in the service of Dr. Achilli. I entered his service in March of the year before last. I came to his house from the House of Mercy, at Windsor; Mrs. Tennent sent me. He took liberties with me after I had been with him about a fortnight. I went up stairs to clear out Augustini's bed-room, and while I was there, Achilli came in; he followed me several times round the room and tried to put his hands round my waist, but he did not succeed, as I walked away from him. His proceedings were interrupted by a knock at the door. He ran down stairs and commenced writing. I went down to see who it was, and found it was my mistress, who had returned home for her parasol. After she went out again I went back to the bedroom, and he followed and renewed his attempts. I walked away and began to cry, and threatened to write to Mrs. Tennent. He said if I did I should be a very naughty girl. He gave me a religious book, the title of which was "Come to Jesus." About a fortnight afterwards, when Mrs. Achilli was out, he called me into his dressing-room to dust the table. I knelt down for the purpose of dusting the legs, and while I was doing this he bolted the door, and then taking me by the shoulders threw me with great force upon a bed. I resisted with all my might, but could not get away. He was intimate with me then against my will. I told him I would leave. I stayed five months afterwards, however. I left because I was so ill that I could not stay any longer. I could not write. I asked my mistress to write to Mrs. Tennent, but she would not.<sup>‡</sup> When I got ill she wrote to some one who wrote to Mrs. Tennent. My father then came to take me away.

Cross-examined by the *Attorney General*.—The House of Mercy is a place for women who have misconducted themselves. I was taken in there on the recommendation of Mrs. Tennent. I was in the house about nineteen months; I was sixteen when I went there. Mrs. Tennent recommended me to Mrs. Achilli. I am a Protestant. I fasted during part of Lent, while I was with Mrs. Tennent, but not while I was at Dr. Achilli's. Had you not a hymn-book to the Virgin Mary?<sup>§</sup> No. Some people say that the House of Mercy is a Roman Catholic establishment, but I believe it is not.<sup>||</sup> Mrs. Achilli told me that Mrs. Tennent had been a Roman Catholic, but had left that religion. I told

\* She was clearly a reluctant witness, as any person so respectable naturally would be—to detail the disgrace of her own sister. This, of course, adds to the value of her evidence.

† A girl, equally plain looking and plain speaking. The Attorney General sneered bitterly at her plainness of look, but did not allude to her plainness of speech, which had a remarkable air of truthfulness and sincerity.

‡ Mrs. Achilli was not asked if this were untrue.

§ What a question to discredit a witness by! One of the finest passages in Sir A. Cockburn's reply is upon this.

|| It is a Tractarian house.

no one of the liberties which Dr. Achilli had taken with me<sup>x</sup> until about four months ago, when one of Mr. Lewin's clerks came to me at Windsor. I did not then tell him about the worst part of the liberties. Three or four days afterwards, however, my father and mother questioned me about the matter, and I told my mother all. They told me I should tell the truth, and I then got a woman to write to Mr. Lewin to tell him all that had passed between me and Dr. Achilli.

Re-examined.—I had been seduced before I went to the House of Mercy. I went there in consequence of having quarrelled with my family.

By the COURT.—I was away from my father's house about three days before I went to the House of Mercy. I had been seduced about six months previously. I first went there without his knowledge. I had been to school, but I left as soon as I could nurse the baby.

Catherine Gorman.—I lived in service with Miss Lambert, 3, St. James's-street, from 1843 to 1849. Dr. Achilli came to lodge there in 1847, before he went to Malta. About six months after he came, he attempted to take liberties with me by putting his hands about my waist. He asked me to confess to him. I got away from him. On one occasion subsequently he asked me to show him the name of a street on the map. I went up to the table for the purpose; he came to me. I went away directly. I am a Catholic, and mentioned these things to my confessor, and in consequence of advice I received from him I avoided being alone with Dr. Achilli.<sup>y</sup> Dr. Achilli, while at Miss Lambert's, was irregular in his habits, and used to come in late at night.

Cross-examined by the *Solicitor General*.—Miss Lambert was a dress-maker. I never told her of this conduct on the part of Dr. Achilli.<sup>z</sup> I was first applied to about coming here by Mr. Simpson, of Clapham-common. He is a Roman Catholic, living upon his own property. I have also seen Father Hutchinson, at the Oratory, about it. He came to me about a week after Mr. Simpson.

Mr. James V. Harting examined by Mr. *Badeley*.—I am a solicitor, in Lincoln's-inn-fields. Lord CAMPBELL.—Are you a Roman Catholic? I am, my lord. Mr. *Badeley*.—I was employed in November or December last to go abroad to collect the evidence necessary in this case. I went first to Rome, then to Viterbo, then again to Rome, then to Naples, then to Malta, then back to Naples; afterwards once more to Rome, and thence home. At Viterbo I entered into communication with the bishop and his vicar-general, and with the priors of St. Quercea and another convent. I communicated also with the police

<sup>x</sup> He had told her that Dr. Newman was a "bad man."

<sup>y</sup> Let the reader who is prejudiced against the practice of confession remark this. It probably saved the girl, as it would have saved Giustini, had she followed the confessor's advice. Moreover, in both cases the advice given appears to have been the same—to avoid the occasion of temptation—the best test of sincerity; and what can more strongly show the falsity of the vulgar idea about confessing, and sinning again, &c., so current in anti-Catholic publications, or on anti-Catholic platforms.

This does not seem at all decisive; the poor girl would be disheartened by the destruction of the notice she had hoped to be restored to; and her voice and manner betokened a great degree of depression—almost despair.

<sup>z</sup> Here, again, the inference insinuated is fallacious. Of what use would it have been to mention it to the mistress? She would not have believed the girl, on the denial of a clergyman; and the girl would more likely have lost her place than the landlady her lodger.

authorities at Viterbo, and the apostolic delegate. The gonfaloniere of Viterbo (an officer resembling a mayor), told me that he could not furnish me with any police documents, because they had all been destroyed. I received from him a declaration of what he heard. Lord CAMPBELL.—Is not this a waste of time? There are no documents to produce. Mr. *Badeley*.—You went to Naples? Yes; I went to the Minister for Ecclesiastical Affairs, and obtained a copy of a letter addressed by the Minister of Police to the Minister of Ecclesiastical Affairs of Naples. Lord CAMPBELL.—How do you make that evidence? Sir *A. Cockburn*.—It is an official report from the Minister of Police. The allegation it is produced to prove is, that on a certain police report of Naples the name of Achilli appears in connection with a certain statement. Lord CAMPBELL (referring to the plea).—That, in a certain official document or report of the officer of police at Naples, he is mentioned as known for habitual incontinence. It is in support of that allegation? Sir *A. Cockburn*.—Yes; and first we show that it is an official report of the police, and then we produce it from the office of the Minister for Ecclesiastical Affairs. Lord CAMPBELL.—Is that the proper custody? Sir *A. Cockburn*.—It was a report made to that department, which had jurisdiction over the subject matter, the conduct of a priest. The document emanates originally from the proper department, and it is produced from the proper department. The *Attorney General*.—How can the witness know that? or even if it purport to be so, how can it give itself an authentic character? That must be established by other evidence. Lord CAMPBELL.—It is produced by a most respectable gentleman, no doubt; but what proof have I that it is an official document of the Neapolitan police? Sir *A. Cockburn*.—There are certain official seals on it. (To the witness) You went to the office the Minister of Ecclesiastical Affairs directed you to?—Yes; there was over the door an inscription, “Office of Minister of Ecclesiastical Affairs.” I asked for the official report made by the Minister of Police in regard to Giovanni Achilli. I went to the Minister of Police. I was introduced to him by that appellation. He told me that being an ecclesiastical affair, the document would be found in the ecclesiastical department. At that office the original document was produced, of which this is a copy. It was produced from the archives, and was on the file of papers relating to this case. Was that the proper custody? Yes. The *Attorney General*.—How do you know? The proper authorities told me so. By Sir *A. Cockburn*.—I saw the seals affixed; one is the seal of the office of ecclesiastical affairs; the other is the seal of the ministry of foreign affairs. I took it there, and had the seal impressed in my presence.<sup>a</sup> Lord CAMPBELL.—The document is clearly inadmissible.<sup>b</sup>

Sir *A. Cockburn*.—Do you produce a copy of the judgment of the Court of Inquisition?<sup>c</sup> Yes. Is that a regular tribunal in Rome, having jurisdiction over ecclesiastics?<sup>d</sup> It is. The *Attorney General*.—

<sup>a</sup> What could he have done more?

<sup>b</sup> Which shows (if it be so) the strict technical absurdity of the English law. A document was offered, not to prove that Achilli was incontinent, but that he was reported as so; which is all that the libel and plea alleged; so the decision was that the document was not proved to be a copy of the report. How could it possibly be proved, then?

<sup>c</sup> Now ensued a struggle as to the admissibility of this document, which formed, in a legal point of view, the most interesting feature of the case.

<sup>d</sup> The reader is requested to consider a few remarks on the origin and cha-

How do you know the business of the court? I hope you have had no personal acquaintance with it? I know it from the statements of the assessor. I applied at the office of the tribunal.

The *Attorney General*.—There is no evidence that this is the regular

racter of the Roman Inquisition. In our own Anglo-Saxon laws, the principle is to be found—that offences against the religion recognised by the state, are not merely spiritual offences, but crimes against society, which the state is bound to punish; and hence, in those laws are to be seen secular penalties for spiritual offences. And Balmez shows that opinions opposed to the interests of morality, society, and the safety of the state, are crimes against the state, and cognizable by the civil power.—*Protestantism and Catholicism Compared*. Now, this was the general character of the mediæval sects against which the Inquisition was directed. If the third Council of Lateran sanctions the severe measures enacted by the civil power against the sectaries of those times, it is because, in the words of the decree, “they exhibited such barbarities against Christians, as not to spare churches or monasteries, but destroying and wasting all like pagans.”—*Harduini Coll. Conciliorum*, vi. p. 2. Llorente, in citing the decree, omits this clause! which is precisely the description of the Wickliffites, the Waldenses, and the Lutheran or Calvinist reformers, who “wasted and destroyed, like pagans, and acted exactly as the Danes had done many centuries before, not sparing monasteries or churches.” Even Mosheim admits that the Cathari raised disturbances in nearly all the states of Europe.—(ii. 465.) (See, as to the infernal atrocities of the Lutherans and Calvinists, *Mores Catholici*, last book.) The Albigenses, according to a contemporary account he preserves, held that all acts of Christian virtue were superfluous, and that the crimes of the voluptuaries would not meet with punishment—which reminds one irresistibly of the blasphemous “sin boldly” of Luther, and the sentiments ascribed to Achilli in the evidence. Arnold of Brescia attempted a revolution, civil as well as ecclesiastical.—*Mosheim*, ii. 471. The Henricians burned the sacred emblems of Christianity, tortured and insulted the clergy, and forced monks by violence to a violation of their vows.—*Fleury*, iv. 578. And the Huguenots in France, or the Stadingers in Germany, committed similar excesses.—*Fleury*, v. 251. The Council of Verona, in which the tribunal of the Inquisition was first formally established, 1184, was a mixed assembly, in which the emperor acted with the ecclesiastical powers; and the organization it received in the Council of Toulouse, 1229, was the result of painful memories of the long and sanguinary struggle to which the Albigensian atrocities had given occasion. The original constitution simply required each bishop to visit annually suspected districts of his diocese, summon witnesses before him, and interrogate them on oath for the discovery of heretics, such as those above described, and members of secret associations. In the Council of Toulouse it was first ordained that there should be a standing commission in each parish, consisting of the parish priest, and two or three laymen of good repute, whose duty it would be to report to the bishop and magistrate cases (*i. e.* of the character above described) occurring within their districts. It was in 1248 that the Dominican order received the special superintendence of the tribunal. The popes reserved superior authority and power of appeal, and invariably exercised it in favour of moderation and mercy.—See *Llorente* and *Balmez*. The Roman Inquisition is not to be confounded with the Spanish, which was not established until 1482, and was purely local and political, not only without the privity of the pope, but in opposition to his remonstrances; and repeatedly checked by appeal from its sentences. Thus, then, the Roman Inquisition is as old as the twelfth century, has ever since been a recognised legal and ecclesiastical tribunal, had its origin rather in civil than spiritual offences, was reasonable and moderate in its character, and, from its very nature, was peculiarly directed, not so much against mere heresy, as against immorality. This is the tribunal of which the Lord Chief Justice of England was so ignorant, and against which he had such vulgar prejudice, that he professed not to know it had a regular legal character at all! and then, even in

course by which a document of this kind is authenticated or made admissible; if it be admissible at all. Lord CAMPBELL (to the witness).—Was that the office professing to be the office for transacting business belonging to this court? It was. What part of Rome is it

opposition to sworn evidence of one of the best canonists in Europe, said he had a notion that it had to do only with heresy, and not with immorality! This is the tribunal, too, of which he said, "Thank God, we have no Inquisition in this country!" which, if it referred to the mode of procedure, was simply untrue, seeing that commissions of Inquisition are identified with the law of England from the earliest times; and the original constitution of the Roman Inquisition resembles strikingly the Saxon court leet in principle, for both were tribunals lay, or partly lay, for the discovery and suppression of nuisances, though the one might be more usually (not exclusively, as in the case of brothels, &c.) directed against physical, the other against moral nuisances. And then, as to the scope of the jurisdiction; does the Lord Chief Justice of England consider it a thing to thank God for, that there is no parochial commission of two or three laymen of good repute to inquire into and suppress such abominations as those of the Agapemone, or of Mormonism! Probably the people of Italy "thank God" they have not such abominations recognised, or silently sanctioned by law, in their country! And as to the secrecy of the Inquisition—its way of taking evidence—it can only be objectionable to prejudice and ignorance; for all the evidence in Chancery and the civil courts is taken in the same way; as also the evidence before a grand jury, which forms a tribunal in strong analogy to the Inquisition, as even in this country moral nuisances may be "presented" before it,—such as blasphemous publications, or public assemblies. Suppose a man were to teach publicly that the Scriptures were the work of impostors, should he not be presented to a grand jury, and indicted on their presentment? And would not the evidence be, in the first instance at least, taken in secret? What is that but the Inquisition? And as to subsequent publicity, of what use is it but to raise scandal and do mischief, and spread the corruption it is desired to suppress? Indeed, the legislature has recently established, most wisely, an ecclesiastical Inquisition, under the Church Discipline Act, for secret inquiries into offences of clergymen; for the express purpose of preventing the scandal caused by offences of ministers of religion. Can there then be a prejudice more vulgar and more ignorant than this against the Roman Inquisition? It is the less creditable in men of rank, education, and station, because all accounts, ancient and modern, attest the extreme moderation of the Roman Inquisition, and its regular recognised system. In 1541, Pope Paul III. urged the Neapolitans to resist the introduction of the Spanish Inquisition, because it was excessively severe, and refused to moderate its rigour by the example of the Roman, which had been in operation three years without a single complaint. And, in 1563, Pope Pius IV., in the same spirit, advised the Milanese, that their Inquisition should continue, as of old, subject to the Roman court, whose rules of procedure were extremely mild, and left the accused the fullest liberty of defence.—*Llorente*. Thus as long ago as the age of the Reformation, the Roman Inquisition had regular recognised rules of procedure. And so recently as the present generation, the Viscount de Tournay, prefect of Rome under Napoleon, from 1810 to 1815, published a description of the Inquisition. "The duties of the congregation of the holy office are very well known; but that which is much less so, is the moderation of its decisions, and the gentleness of its proceedings. Now the size of the prisons, and their healthiness and cleanliness, are a proof of the feelings of humanity of those who presided over them."—*Etudes Statistiques*, vol. ii. p. 47.

As to evidence of a judgment, it is elementary law that "It is not matter of substance to show letters of administration, for whether they are legally granted or not, belongs to the cognizance of the spiritual courts, who are governed by the rules of the civil law, and, therefore, they legally cannot be weighed at common law, since it has different measures of jurisdiction."—*Gil-*

in? The Vatican? I found the notary; he referred me to the assessor; the document was delivered to me by the notary. It has the certificate of the secretary of state and archivist, Cardinal Antonelli. The *Solicitor General*.—Pray, Sir, have you had business with the Holy Inquisition before? Not personally. What means have you of knowing anything of the course of business in the court? From books of practice and from seeing documents of the court. You have no personal experience; you know nothing except what was told you? And what I learn from books of practice. You were never there before? No. Do you know anything, then, about the office? They gave me books of practice to refer to. A book of practice of the Holy Inquisition? Yes.<sup>c</sup> Who told you of the course of the office? The assessor and the notary, officials of the court. You were introduced to him as a notary of the court? Yes. And you found him at the office of the Inquisition? Yes. He was spoken of as a notary of the Inquisition? Yes. LORD CAMPBELL.—He would not know St. Peter's until he was told. (Laughter.) The *Solicitor General*.—You know nothing of the document but that he gave it you? No. You compared it with no other document? No. Do you know anything of the genuineness of the document, or whether it is a copy of the judgment? Except from what he told me, and from the seal of the office. I saw the seal affixed at the office, and Cardinal Antonelli's afterwards. The office was at the Vatican, in the rooms appropriated to the Inquisition. LORD CAMP-

*bert on Evidence, 95.* So probate of a will under the seal of the court is sufficient, and no evidence to the contrary can be given, for the spiritual courts are the proper judges. But the adverse party may give in evidence that the probate is forged, or obtained by surprise.—*Ibid. 75.* In the present case, the Court presumed it to be forged, at least, in part. So again, exemplifications are of better credit than any sworn copy, for the courts of justice that put those names to a copy are supposed more capable to examine, and more exact and critical in their examination, than any other person is or can be; and, besides, there is more credit given to their seal than to the testimony of any private person; and therefore we are more sure of a fair and perfect copy when it comes attested under their seal, than if it were a copy sworn to by any private person.—*Ibid.*

<sup>c</sup> Of which this is a summary:—"The Court of Holy Office is charged with the correction of all offences against faith and morals, and from the nature of its functions proceeds most commonly on accusation made, or, as it is technically termed, '*per via di denunzia.*' In cases of notorious offenders it proceeds *ex debite officii*, or '*per via de Inquisizione.*'"

"The depositions are all taken on oath, and in writing, by the notary of the court, and are signed by him and by the witness. If, after preliminary inquiry and perusal, and consideration of the evidence so taken, the judge considers that the case should proceed, he decrees accordingly; and upon the decree so made which is signed by the notary, a citation issues. After the evidence against the accused is completed, the accused is interrogated upon the facts so obtained; and if he denies them, the evidence is read over to him; but in the first instance the names of the witnesses are not given. If he still persists in his denial, he is confronted with the witnesses, and all are again interrogated in the other's presence, and he may call witnesses to contradict—if he can. Upon the result the judges then proceed to judgment. In cases where the accused, upon interrogation, confesses the charges, or some of them, no confrontation takes place. The preliminary depositions,—the decree to proceed, the citation and return, the evidence in substantiation of the charges, and of the accused, and of his witnesses (if any) for the defence, with the judgment, and what was done thereon,—make up the process which is preserved as of record in the archives of the court." See Achilli's own admission as to its fair procedure.

BELL.—I don't suppose the prisoners are there! The *Solicitor General*.—Who introduced you there? Am I obliged to state? Certainly. I have no objection to write it on a paper for the Lord Chief Justice. The *Solicitor General*.—No; I must have an answer. It was Monsignor Talbot. Lord CAMPBELL.—Private secretary to the Pope!<sup>f</sup>

The Bishop of Southwark called (as Dr. Grant) and examined by Sir A. Cockburn.—Dr. Grant, you are a Catholic bishop? I am. Lord CAMPBELL.—Of what see? The bishop was silent. Sir A. Cockburn was about to object. The *Attorney General* rose and said, "The public prosecutor is present!" Lord CAMPBELL exclaimed, "Oh, I will not press for an answer!" Sir A. Cockburn.—Were you resident in Rome for many years? For nearly fifteen years. You were for some time rector of the English College at Rome?<sup>g</sup> I was. During your residence there, the matters with which I was charged led me to an acquaintance with the business of the courts of Rome. I know the Inquisition among other courts. The office is in the Vatican; formerly it was in the palace called the Palace of the Inquisition, close to St. Peter's; but since the French occupation it has been taken into the Vatican: the court, however, sits elsewhere. Lord CAMPBELL.—Have you been at Rome since the invasion of the French? I was there then, my Lord. Sir A. Cockburn.—Do you know the seal of the court? I have never seen it actually affixed to any document; but I have seen documents belonging to the court. I have never received documents directly from the Inquisition. I have received them through other congregations,—as the Propaganda. I have applied at the office of the Inquisition, and the documents have come through other courts. I have applied not at the office, but to the court, by petition, and have had answers to the petitions. The documents I received were sealed; they had seals affixed, purporting to be the seal of the court. Looking at the document now produced, from having been acquainted with the seal of the court, I can say that this is similar. Strangers are not allowed to enter into the office. The COURT.—How do you know that? I have had to wait until the clerk came out.<sup>h</sup>

<sup>f</sup> The *Attorney General*, in his reply, pressed the reluctance to mention the name as a proof of a conspiracy for forgery of the document? What a state of mind that man's must be who could fasten so fearful a meaning on so trivial a circumstance! The witness was well aware of the prejudice against a "Monsignore."

<sup>g</sup> The English college had been originally the hospital of the Holy Trinity and St. Thomas—established for English pilgrims, after the destruction of the ancient Saxon school, in 847, which was founded by King Ina, in 727, for the education of Saxon ecclesiastics. It was for the maintenance of this school he originated Rome's scot, or Peter's pence, which was paid with some intermissions until the reign of Henry VIII. In 1351, just 500 years ago, the present hospital was founded; and there exist in the archives letters from Henry VII., eulogizing the foundation. In 1579, it was devoted to English exiles, and the hospital being dissolved, a college was erected, with the revenues of the former establishment. Cardinal Allen (once rector of St. Mary's, Oxford), aided in establishing the college; and in 1680, the college and church were rebuilt by Cardinal Howard. In 1798, the French confiscated his property, and it was not restored till 1811, when Dr. Gradwell, afterwards vicar apostolic of the London district, was made rector. In 1828, Dr. Wiseman succeeded him, and was followed, in 1844, by Dr. Grant. The college gives gratuitous education to twenty-five ecclesiastical students. In the Roman universities the legal studies embrace international law, the canon and civil law, and the institutions of ecclesiastical and criminal law. The reader may be informed that the bishop is esteemed a very good canonist.

<sup>h</sup> The *Attorney General* made a most mysterious and suspicious affair of this;



Cross-examined by the *Solicitor General*.—Have you received such a number of documents with the seal of the court as to make you familiar with the seal? From looking at the seal on this particular document I believe it to be the true one. That is no answer. I ask you, have you received, yourself, a sufficient number of documents under the seal of the court to enable you to swear that you are familiar with the seal? I have received documents with the seal,—not this particular seal. No, of course; but that form of seal, that appearance of seal? Yes? Is the office at the Vatican? I believe so. Believe! do you not know? I mean that about the time I was leaving Rome the French had re-occupied the Palace of the Inquisition, and that the office was, I believe, to be taken into the Vatican. You learn it from what you heard? I was told so by one of the officers of the Inquisition. Sir *A. Cockburn*.—Now, my Lord, I tender this judgment in evidence. The *Attorney General*.—I beg to call your lordship's attention to the Act 14 & 15 Vict. c. 99, s. 7, providing "that all judgments, &c. and any proceedings or decrees, may be proved in any court of justice by examined copies, or by copies authenticated by the seal of the court to which the original document belongs; and that if any copies shall purport to be so sealed, the same shall be admitted as evidence in every case in which the original document is reasonable evidence, without any proof of seal, or of the judicial character of the person sealing," &c. Now the ground on which I submit that this proof here fails is, that there is no evidence of the existence of a court having jurisdiction over the subject matter, which is essential, in order to make the seal of the court authenticate itself in this way. Sir *A. Cockburn* (to the bishop of Southwark).—Has the Court of Inquisition jurisdiction over the clergy in matters ecclesiastical? It is the supreme court in matters ecclesiastical. It has jurisdiction over the clergy in higher crimes. The *Attorney General*.—How do you know that? Because I have been acquainted with all the different courts, having been consulted by those courts upon points of law; and from being consulted by the courts, it was naturally my duty to know what affairs belonged to one court rather than another. I was employed by the English bishops in getting documents from each. Lord CAMPBELL.—Are you acquainted with canon law? I was employed by Cardinal Acton to advise him on points of canon law; and he was judge in several of these courts. Has the Inquisition a jurisdiction of its own? The court is regulated by the canon law. You are aware that there is a distinction between the proceedings of a court and its jurisdiction? I am speaking of jurisdiction. I am asking whether the jurisdiction exercised by the Court of Inquisition exists by consent of the state? It exists by consent of the sovereign of the state; and in Rome its proceedings are regulated by the canon law. You will not distinguish between jurisdiction and proceedings. I am now on the jurisdiction. I want to know if its jurisdiction depends on the canon law, or whether it is peculiar to itself? It is a jurisdiction peculiar to itself; and I thought I had explained that it depended for existence on the act of the sovereign of the state, or sovereign. Then is the jurisdiction of the Inquisition the same in every state in which it is allowed to be established, or does it vary

and pressed it as another proof of his frightful theory of forgery and fraud! As if a much more natural reason (the true one) were not the desire to avoid scandal through any disclosure of matters of immorality that might be pending against any priests!

according to the will of the sovereign of each state? As a matter of law, I believe that sovereigns have dictated to it as to its proceedings; for instance, in Spain, and in some particular cases; to what extent I do not know. Then its jurisdiction varies in different states? Yes. We are now inquiring into its jurisdiction in Rome? Yes. It is there the supreme court of ecclesiastical jurisdiction. The *Attorney General*.—You have not been consulted by the Inquisition? No. When you say you were consulted by the different courts, you mean by the other courts? By Cardinal Acton, for different courts of which he was a member, and by the Propaganda. Not with regard to the Inquisition? I was obliged to know what proceedings would belong to the Inquisition. I was agent for the ecclesiastical affairs of the English bishops, and it was my duty to be acquainted with the particular business belonging to each court. I do not quite understand. Are we to gather, that all which does not belong to the other courts belongs to the Inquisition? No; the different matters are distributed among the different courts; and the Inquisition is one, the Propaganda another, the Congregation of Rites another. Then, knowing what is the business of the other courts, you assume that what does not belong to other courts belongs to it? I do not assume it; I have a knowledge, derived from the general run of business with which I was acquainted, as to what part goes to each particular court. Lord CAMPBELL.—I do not see how it is possible to have more satisfactory evidence!<sup>1</sup> The *Attorney General*.—What are the matters within the jurisdiction of the Inquisition? The jurisdiction is partly criminal, and partly a court to advise the Holy See on difficult questions of theology. What is the nature of the criminal jurisdiction it exercises? It exercises general jurisdiction on matters of heresy, and in great cases of immorality against ecclesiastics. Have you explained the whole of the jurisdiction exercised by the Inquisition? What I have said takes in most of the subjects of it; unless, perhaps, I ought to add that there are other circumstances supposed to fall under the classification of heresy. The *Attorney General* (sarcastically).—Oh, heresy! no doubt. (Laughter.) Sir *A. Cockburn*.—Cases of immorality are subject to its jurisdiction? Yes. Sir *A. Cockburn* again tendered the judgment for admission. Lord CAMPBELL.—What is the objection? The *Attorney General*.—I object not upon the ground of jurisdiction, nor as to the seal, but to the mere production of the judgment, without any proof that Dr. Achilli was before the Court, or that there were any proceedings on which it was founded. It may be a mere statement of matters *ex parte*; it may be a mere fabrication, from beginning to end!<sup>2</sup> The

<sup>1</sup> Even the Lord Chief Justice grew impatient at the peddling, pettifogging objections taken to the admission of the document; the admission of which, however, he afterwards entirely neutralized.

<sup>2</sup> The atrocious suggestion, which involves such venerable men as Cardinal Antonelli, and the other ecclesiastics of the Roman congregation, in the crimes of conspiracy and forgery, and subornation of perjury, might have been and was supposed at this time to be a mere savage burst at the close of a long day's struggle, with the anticipation of a defeat; but the reader will find that the *Attorney General* in his reply repeated it deliberately, and made it the ground of his defence of Achilli! What a desperate defence it was, may be imagined from its own nature and from the fact, that, at the close of the evidence for the defendant, it was generally conceived that the line taken in reply would be to suggest that there were two Achilli's (if, indeed, there could be two!); and this,

*Solicitor General.*—I have likewise to object that there is not only *no* proof of the identity between the prosecutor and any gentleman named Achilli, but there is no proof that any one at all was before the Court! Lord CAMPBELL.—That is what has been just urged. The *Solicitor General.*—I contend that it is contrary to the first principles of the law of England to admit as evidence against a man a judgment in a criminal procedure without clear proof that he was called upon to answer. My Lord, this is the first time that a judgment of the Inquisition has been tendered in evidence (at least, since the Reformation) in an English court of justice;<sup>k</sup> and whatever may be the nature of the court, it is not to dispense with the first principles of the English law. Mr. *Ellis.*—Even in civil matters, a judgment is not evidence where it appears that the party was not heard.<sup>l</sup> The confession may have been put in without Dr. Achilli appearing at all; and it is a tribunal of whose authority or seal the Court can know nothing.

Lord CAMPBELL.—I am called upon to determine whether this document is admissible in evidence on the allegation in the plea.<sup>m</sup> I am clearly of opinion that it is. I am not considering whether it is evidence under which Dr. Achilli could be led out to be burnt alive, or to be imprisoned for life in the dungeons of the Inquisition;<sup>n</sup> but merely whether it sustains the allegation in the plea. We must not be frightened at the word “Inquisition!” Thank God, the thing has no place in this country!<sup>o</sup> But I have abun-

it will have been seen, was actually hinted at by the Solicitor General. But Achilli’s counsel—knowing that the very name of the Inquisition was a “tower of strength” to them—determined upon that which, ordinarily, would have been indeed a desperate course,—to defend one man by imputing forgery, conspiracy, and perjury, to half a hundred others!

<sup>k</sup> But not the first time ecclesiastical judgments or documents, emanating from the Holy See, have been received in English courts of justice; on the contrary, the law of England has a distinct class of decisions, and a regular course of procedure on the subject, settled centuries ago. The course at common law is, for the bull or brief to be certified by a Catholic prelate. When the Catholic Church was recognised by law this would be by his seal; now it must be in person; and that is the only difference. Year Book 31, Edward III., 9, cited in the writer’s pamphlet on the Catholic hierarchy, p. 25.

<sup>l</sup> Yes, but here that did not appear; but the contrary appeared.

<sup>m</sup> Which was, that by the Court of Inquisition, Achilli had been perpetually suspended and deposed from the functions of the priesthood.

<sup>n</sup> The reader will remark and appreciate this specimen of impartiality, and compare it with the following extract from Scrogg’s charge in the case of poor Coleman:—

“You shall have,” says Scroggs, in Coleman’s case, “a fair, just, and legal trial. If condemned it will be apparent you ought to be so: and without a fair proof there shall be no condemnation. Therefore, you shall find we will not do to you as you do to us, blow up at adventure, kill people because they are not of your persuasion. Our religion teacheth us another doctrine, and you shall find it clearly to your advantage. We seek no man’s blood, but our own safety.”

<sup>o</sup> Here there was some stamping of feet from some of the lowest class in the outer portion of the court; marked indignation and disgust from the educated portion of the audience—including members of the bar—and even clergymen of the Church of England. Lord Campbell did not check the applause he received! The *Times* remarked on this:—“We have every respect for the high judicial character and attainments of Lord Campbell, and it is therefore

dant evidence before me of the existence of such a jurisdiction, and that this is a judgment under the seal of the tribunal, and I have no difficulty in admitting it *valeat quantum*. It is remarked, in the course of the argument, that this is the first time since the Reformation that the judgment of the Court of Inquisition has been tendered in evidence in an English court of justice. Looking at this document, however, I find that it is a copy of the proceedings of the Court of Inquisition; that such a jurisdiction is exercised at Rome. Thank God, it does not extend to this country!<sup>p</sup> This country will, however, be ready to receive documents emanating from courts of justice in other countries; and I think that, in receiving this document, I am not in the slightest danger of doing that which may prove injurious to the Protestant religion of this country.<sup>q</sup> I do not receive this as I should a record of a Court of Admiralty, as conclusive evidence of the facts,<sup>r</sup> but only as evidence in support of the defendant's allegation that there is such a judgment in the Court.<sup>s</sup>

The judgment was then put in :<sup>t</sup>—

“Testor ego infrascriptus notarius S. Congregationis Romanæ, et Universalis Inquisitionis, quod perquisitis actis assumptis in S. Officio contra sacerdotem P. Hiacynthum Achilli religiosum professum ordinis Prædicatorum, constat ex eisdem actis, ipsum Achilli, constitutis judicialibus excussum, fuisse reum confessum de carnali copula, dum in cœnobio Viterbiensi moraretur, cum pluribus fœminis habita, item de defloratione alterius virginis in civitate Montis Falisci, aliasque duas

with great regret we find him, in a case of so much delicacy and excitement, drawing attention to the Ecclesiastical Titles Act, ‘thanking God’ that ‘we have no Inquisition in this country,’ and, after he had been sufficiently applauded, renewing the remark that it might be applauded again, and assuring the audience, with grotesque solemnity, that by admitting this document he did so without the slightest degree of danger to the Protestant religion of this country—a discovery which was received by the enthusiastic audience with a third round of cheers.”

<sup>p</sup> There was another outbreak from the back of the court, which Lord Campbell received as placidly as the first. It will be seen that he at once rebuked the applause Dr. Newman's counsel elicited.

<sup>q</sup> And if it were otherwise, the Lord Chief Justice would not have admitted it.

<sup>r</sup> Why not? It was a judgment of a regular court of a sovereign state. Why should it not be taken as all judgments of supreme courts are, as conclusive evidence of the facts it recites? Let it be observed, this latter sentence, was spoken after the chief justice had read the judgment carefully, and proved that it recited such offences as were charged in the plea, and if given full effect to, would sustain the plea. And let it be also observed, that the struggle throughout was for the admissibility, at all events, of the entire documents, including the grounds of the judgment as recited in it; the whole appearing (as will be seen) as one and the same record under the same authentication; and so it was admitted, and an objection even started as to the reception of the recitals. Next day, however, after further reflection, Lord Campbell rejected the recitals!

<sup>s</sup> The struggle for the admission of these documents lasted about two hours.

<sup>t</sup> When the judgment was put in, a barrister of some eminence turned round and exclaimed, “Thank God for that! Newman is now morally vindicated! Whatever the verdict may be, the Court cannot sentence him!”

mulieres Capuæ carnaliter cognovisse. Eruitur quoque aliam puellam Neapoli matrem reddidisse; ac superiorem ordinis Prædicatorum scutato quinquaginta alteri fœminæ ab eodem Achilli corruptæ pependisse ad damna illata sarcienda.

“Denique fidem facio, quod ob memorata crimina, et alia de quibus in actis maturo prius discusso examine gravaminum ex actis resultantium, perpensis defensionibus, aliisque ex more consideratis, nec non benigne excepta ipsius inquisiti confessione, ejusdemque declaratione sequentis tenoris:—‘Non chiedo di non esser gastigato, auzi amo—che si proceda severamente sul conto mio in quel modo la giustizia esige. Ricevero, con rassignazione qualunque disposizione venga emanata, ed ove mancasse qualche ragione a procedere con più rigore, la mia confessione sia bastante a punirmi come meglio credera il S. Tribunale.’ Emi. Inquisitores Generales, Fer. iv., die 16 Junii, 1841, in Conventu S. Mariæ supra Minervam decreverunt: Inquisitus P. Hiacynthus Achilli—prævia suspensione perpetua a celebrando sacrificio Missæ, inhabilitatione perpetua ad quamcumque directionem animarum, et ad Verbi Dei prædicationem, nec non privationis vocis activæ ac passivæ, et impositis pœnitentiis salutaribus, damnatur ad manendum per triennium in aliqua domo Religiosa sui ordinis strictioris observantiæ.

“In quorum fidem Datum ex Cancellaria S. Officii hac die 22 Septembris, 1851.

“ANGELUS ARGENTI,

“S. Rom. et Univ. Inquis., Notus.

“Testis, Fr. VINCENTIUS LEO SALLUA, O.,

“Præd. 1. Socius S. R. Inquis.

“Witness, JOHN GORDON,

“Cong. Orat. Presb., Birmingham.

“Witness, NICHOLAS DARNELL,

“Cong. Orat. Presb., Birmingham.

“Sworn before me at Rome, this 17th day of November, 1851.

“JOHN FREEBORN,

“British Consular Agent, Rome.”<sup>u</sup>

The following translation was read:—

“I, the undersigned notary of the Holy Roman and Universal Congregation of the Inquisition, do testify that, after a complete investigation of the proceedings instituted<sup>v</sup> in the Holy Office against Father Hyacinth Achilli, priest, religious professor of the order of preachers, it is proved from the same acts that the said Achilli, having been examined by the established authorities, confessed himself guilty of having held carnal intercourse, whilst he was living in the monastery of Viterbo, with many women; also of having deflowered another who was a virgin in the city of Mount Faliscue, and of having carnally known

<sup>u</sup> The above document is sealed at the signature with a large seal bearing the insignia of the triple crown, supported by St. Peter and St. Paul, &c., with these words on the margin, “Sigil. S. Roman. et Univers. Inquisitionis,” in Roman capitals, and at the foot it is stamped with the seal of the British Consulate, Rome.

<sup>v</sup> In the civil law, the parties exhibited their interrogatories on their several allegations, and the witnesses were privately examined upon these interrogatories by the same judges who tried the cause.—*Gilbert on Evidence*, p. 39, citing *Dig. lib. xxii. tit. 5. sec. 3. de Test.*

two other women at Capua. Moreover, it is discovered that he made another girl at Naples a mother, and that the superior of the order of preachers paid fifty scudi to another woman who had been corrupted by the same Achilli, in order to make amends for the injuries done. Lastly, I attest that on account of the crimes of the above-named, and other crimes of which mention is made in the acts, after mature and deliberate examination of the heavy charges resulting from the acts, after having weighed the charges put forth, and considered<sup>w</sup> other matters according to custom, and after having mercifully accepted the confession of the accused himself, and his own declaration of the following tenor,—‘I do not ask to be chastised, nay, rather I desire to be severely dealt with on my showing, according as justice demands. I will receive with resignation whatever punishment may be determined upon, and supposing there were wanting sufficient reason for proceeding with greater rigour, I desire that confession be considered sufficient grounds for punishing me as the said tribunal shall think best.’<sup>x</sup>—their eminences the Inquisitors General on Wednesday, June 16, 1841, in the Convent of Santa Maria supra Minerva, decreed that the accused Father Hyacinth Achilli, after having been for ever suspended from the celebration of the sacrifice of the mass, and for ever disabled from any sort of direction of souls, and preaching the Word of God, and deprived of active and passive voice in the government of his order, and after having had salutary penances imposed upon him, be condemned to remain for three years in some religious house of his order of the most strict observance.<sup>y</sup>

“Given in testimony of all these facts for the chancellor’s office of the Holy Office, on this day, Sept. 22, 1851.”<sup>z</sup>

<sup>w</sup> The following is the form of a judgment by confession, in the Queen’s Bench, which is drawn up by the master, or officer answering to the “notary” of the Inquisition, who first sets forth the declaration, and then says:—“The said C. D. (defendant) says, that he cannot deny the action, and therefore it is considered (*ideo consideratum est*) that the said A. B. do recover against the said C. D.” &c. That is, the master certifies the pleadings as the notary certifies the acts, and then certifies that “it is considered” by the Court, &c., just as the notary does in the Court of Inquisition. The parallel appears precise. With respect even to common conviction by magistrates, as to which the rule is very strict, it was long ago held by Holt, C.J., and lately recognised by Denman, C.J., that “it was enough if it appeared (*i. e.* on its face) that an offence had been committed, and an adjudication of imprisonment by a court of competent jurisdiction.”—*Bethel’s* case, Salkeld’s Reports, cited *in re Hammond*, Queen’s Bench, Trinity Term, 1846.

<sup>x</sup> The *Times* says, “Against these positive statements, these accumulative and corroborative probabilities, and these dangerous admissions, there is nothing to be set except the denial of Dr. Achilli, adhered to with steadiness and pertinacity; a denial which amounts to little more than a repetition of the affidavit upon which the criminal information was granted. If no amount of evidence could outweigh Dr. Achilli’s denial on oath, the solemn proceedings of the trial were a hollow mockery; and if it could, it is difficult to conceive what testimony the jury could have expected.”

<sup>y</sup> The *Times* says, “The sentence of the Inquisition, moreover, solemnly recites under respectable attestation his own confession and submission, in Italian.”

<sup>z</sup> It has long been settled law that a foreign judgment is *primâ facie* evidence even of a debt to be recovered in this country, and conclusive until it be impeached by the other party (per Butler, J., *Walker v. Willer*, 1 Douglas; also *Sinclair v. Fraser*, 20 Howell’s State Trials). This doctrine was recently affirmed

Mr. Reynolds re-called and examined by Mr. *Badeley*.—Do you know the seal of the court at Corfu? Yes. This is the seal of the Civil Court (looking at document produced). Mr. *Badeley* then tendered in evidence the document :

ANTONIO CAPELLO, Present.

Corfu, 3rd July, 1843.

(Stamp.)

President of the Meeting, S. A. Capello.

4th Class.  
6d.

To the Noble Civil Tribunal.

The Petition of Nicholas Garimoni, in answer to that of June 21, 1843, of Marianne Crisaffe, his Wife.

(Stamp.)

U. States of  
The Ionian Isles.  
Royal Arms.  
1850.

States that his wife was surprised in the house of her mother, at about half-past 11, on the night of this last 2nd July, 1843, by her husband, while she was in company with a certain Signor Achilli Giacinto ; and that the time, the manner, the circumstances, and the

conversation that followed the surprise, prove that the said wife was unfaithful to her conjugal duty.

Witnesses : ANTONIO VIRISSO.  
MARCO TEVANSKI.

(Signed) STATIO SPANOPULO, Advocate.

Extracted the 5th March, 1850, from the Acts of Trial, No. 120 (of July, 1843), of the Civil Tribunal.

(Signed) NICOLO VARTLA, Local Archivist.

William Nicholi was then called, and said,—I am a Dominican friar. Every one becoming a member of that order takes the three usual vows

solemnly in the House of Lords, *Houlditch v. Donegall*, 8 Blyth's Reports, N.S. ; and even to that extent of receiving evidence against it, the judgment is only examinable when a party applies to our courts to enforce it. Per Eyre, J., *Phillipps v. Hunter*, Q.H. Blackstone's Reports.

In a case occurring within the last five years, Lord Denman and the Court of Queen's Bench held that even a plea to an action on a judgment in a colonial court (which is treated as a foreign judgment), must steer clear of any inquiry into the merits of the case, for whatever constituted a defence in that court ought to have been pleaded thereto.—*Henderson v. Henderson*, 6 Queen's Bench Reports.

So in another late case, Alderson, B., in giving judgment, said " It is not contrary to natural justice, that a man who has agreed to receive a particular notice of a legal proceeding should be bound by a judgment in a cause where that particular mode of notification has been duly performed, even although he has not had actual notice of it.—*Vallee v. Dumergue*, Exchequer, Trinity Term, 1849.

In a late case in the Common Pleas, Maule, J. said, " Whether a man is bound by the law of a foreign country is matter of law here and everywhere. There is nothing on the absence of process contrary to natural justice, if there has been some other kind of notice, as verbal notice." And Wilde, C.J., said, " If a court of competent jurisdiction have given judgment, that judgment, at the place where it was given, is conclusive against the parties, if not appealed against ; and that, even where so sued upon itself in this country, it is *prima*

of poverty, obedience, and chastity. Every priest, whether of that order or not, comes under the obligation to chastity. The *Attorney General*.—What, are the vows repeated? Witness.—No; but the office of priest involves it in itself. <sup>a</sup>

*facie* evidence of a cause of action.”—*Bank of Australasia v. Harding*, Trinity Term, 1850.

In a case occurring last year, Lord Campbell recognised these doctrines, and said, “It does not appear that the question has ever been decided whether even in an action upon a foreign judgment the merits of the case on which the foreign court has regularly adjudicated, may be put in issue. Doubtless it is open to the party to show that the foreign court had not jurisdiction (in Dr. Newman’s case he called upon him to prove that it had) of the subject matter of the suit, or that he never was summoned to answer (*quære*, as any notice, usual or accepted, is held sufficient in cases just cited), and had no opportunity of making his defence, or that the judgment was fraudulently obtained. It is enough to say that the *dicta* against retrying the cause are as strong as those in favour of the proceeding, and it must now be taken to have been in due manner decided against the defendant. How far it would be permitted to a defendant to impeach the competency or integrity of a foreign court, from which there was no appeal, it is unnecessary here to inquire (in Dr. Newman’s case he permitted the prosecutor to impeach both); the documents by which the case was established in a distant quarter of the globe may be lost, or not forthcoming; and the witnesses who truly swore it may be absent or dead. If the judgment were given by a court in a foreign country, how is the cause to be retried here?”—*Bank of Australasia v. Nias*, Queen’s Bench, Hilary Term, 1851.

<sup>a</sup> In the first place, a postulant is reminded according to the formulary for receiving to the order:—“Oportet quod intelligas, quæ habeas servare in religione, ne postea dicas, te fuisse deceptum, vel non credidisse tot ardua esse in ea. In primis oportet te servare tria, vota principalia religionis, viz. obedientiam, paupertatem, et castitatem. Quantum ad obedientiam scias quod eris obligatus servare Regulam et Constitutiones nostras, et obedientias majorum tuorum, ita quod non existimes te ullam habere libertatem, sed totalitè esse subjectum, et privatum propria voluntate.—Quantum ad paupertatem, similiter non poteris habere aliquid quantum cunque modicum, quod possit dici tuum vel quod tu possis dicere, hoc meum est.—Circa castitatem teneberis non solum servare castitatem corporis, sed etiam mentis; id est, quod non cogites de rebus inhonestis, nec delecteris in illis, et ultra hoc non poteris loqui turpia, aut facere actus turpes et inhonestos, et lubricos nutus et fixationes oculorum in mulieres; et ita te existimes in hoc tamquam non esses homo, sed lapis vel lignum.” These admonitions, which are rather curtailed, precede the admission to the noviciate, which lasts twelve months; during that period the postulant is required to live in accordance with the said rule, and at the expiration of that term, if nothing be said to the contrary by the superiors, and the postulant still continue to bear the habit and observe the rule, a tacit profession takes place, binding him to the order, and *vice versâ*. If, however, a public and oral profession takes place, as is the universal practice, he uses the following form:—“Ego, frater N——, facio professionem: et promitto obedientiam Deo, et Beato Mariæ, et Beato Dominico, et tibi,” &c. Upon this form the Constitutions remark:—“Declaramus quod professio est votum solemne. Declaramus quod inter tria vota principalia, et essentialia religioni est obedientia, tum quia per eam majus bonum Deo offertur, quam per alia (offertur enim per obedientiam Deo propria voluntas et bona animæ; quæ præferuntur bonis corporalibus et exterioribus quæ per alia vota Deo offeruntur); tum secundo, quia votum obedientiæ continet in se alia vota, et non ex converso (qui enim promittit obedientiam, promittit caste et sine proprio vivere); tum tertio, quia votum obedientiæ proprie se extendit ad actus proprios propinquos fini religionis, qui est perfectio charitatis et dilectionis Dei. Quanto autem aliquid est propinquius fini tanto melius est; et propterea in professione nostra exprimimus solum votum obedientiæ,



Sir *A. Cockburn* then put in Achilli's book, "Dealings with the Inquisition,"<sup>b</sup> to show that if the defendant's charges against Dr. Achilli were true, their publication was for the public utility, when

sub quo continetur observatis castitatis et voluntariæ paupertatis, et præceptorum quæ in Regula et Constitutionibus continentur, vel quæ a Prælato fiunt:— Declaramus, quod ex voto nostræ professionis tenemur et obligamur caste, et sine proprio vivere, et Regulam ac Constitutiones non contemnere, et præcepto in Regula, vel in Constitutionibus facto, in his quæ sunt secundum regulam et constitutiones, usque ad mortem inclusive obedire."—"Item declaramus, etc. similiter si profitendo exprimat aliquid religioni repugnans, puta se dicat; non intendendo servare castitatem promissam, quantumcumque illam promittam, non tenet professio; hæc enim expressa nocent, non expressa non nocent."

<sup>b</sup> As this book was regularly received in evidence, anything stated in it is, of course, evidence against the author; and as the law privileges "fair criticism" on any publication, a few remarks upon its character may properly be made. It is, however, really beneath criticism, and all that need be said of it on that score is that it is a collection of loose, gossiping stories, obviously the effusions at once of enmity and vanity, the object of which is to convey an exalted idea of himself, and to cast odium on all other of the ecclesiastics in the Catholic Church. And this enmity and vanity are so blind, that they lead to the most ludicrous self-contradictions. Thus, for instance, he calls the Inquisition "barbarous," yet elsewhere admits he said he had no fault to find with the slight correction he had received; and surely, for a person who had for ten years (as he himself admits) been secretly teaching what they deemed heresy, and perverting others to it, a few months' imprisonment (putting out of question the alleged immoralities) was not very barbarous. In another place, he represents himself as a sworn enemy to hypocrisy, and as one frank and sincere by nature; and yet he acknowledges that for many years, after being perfectly persuaded that the mass was an imposture, he continued to celebrate it! He professes to narrate accurately things said at secret conclaves of the Inquisition, and represents a Jesuit as giving a circumstantial exposure of the arts and artifices of his own order! He professes to state things he ascertained as happening at Ancona, while he was passing through it as a fugitive to Corfu, in such haste, as it was sworn in evidence, that he had not money to pay his passage, and had to get his name into another person's passport. He pretends to have been disgusted with the monks for their immoralities; yet he does not venture to say he ever remonstrated with them, or represented matters to the superior authorities, whereas he discloses that they repeatedly remonstrated with, and complained against him. He says he could not live among them, but does not say that he ever demanded an investigation into their conduct. He says he was himself, on several occasions, in authority, as sub-prior, prior, and visitor, yet does not venture to say he ever used his authority to repress these supposed practices, except in a single case of a man since silenced by death. He represents the monks as distrusting and disliking him, and yet as pressing him to continue with them. He alleges that no complaint had been made against him until 1841, when thrown into prison, yet repeatedly states that accusations were made against him ever since 1833. He says the Bible is deemed heresy in the Church of Rome, yet says he held chairs of scriptural teaching; represents an eminent ecclesiastic as giving him a copy of the Bible to read, and declares that he for years preached and taught entirely from the Bible. He says he was full of wrath against the Church, ever since he discovered her deceits, and yet, though he also says he discovered those deceits, and was persuaded her whole doctrine was imposture, as early as 1833, he never seceded to Protestantism until he had been sentenced to perpetual deprivation. He says the Inquisition proceeded only for heresy, yet says that he was known to have held that heresy for ten years previously, and at the same time admits that there was a report that he had been guilty of other crimes, and speaks of documents produced to prove the falsehood of accusations as to his conduct at Viterbo, made while he was in the Inquisition prison! He

The *Attorney General* said that he would not trouble his learned friend to prove this, but would at once admit it.

In this book Achilli says, "The first attack against me was at Viterbo" (p. 37). Some among the friars disliked me" (p. 36). "The vicar of the bishop raised reports against me. I was told of the evil reports but took no notice of them" (p. 130). "I entreated the general of the order to allow me to remain in peace at Viterbo, but he refused to comply with my request, and ordered me to renounce my professorship, and repair to Rome: at last I could visit no longer, and was obliged to surrender my professorship into the hands of the bishop" (129—30). "It was thus that I was forced, at the close of 1833, to leave Viterbo."<sup>c</sup> "The first of my accusations dated from 1830,<sup>d</sup> while holding the head professorship of theology in the college of Viterbo, and advocating and teaching with great zeal the Romish doctrine." "I disbelieved in the mass, and rejected its doctrine" (161, 162). "I was perfectly persuaded of its impostures in 1835, and the heresies of its doctrine, but continued to celebrate it without devotion, but with a show of earnestness" (201). "At that time I had never yet publicly given any idea that I was at all dissatisfied with the doctrines of the Church, or differed in opinion with the monks, or had quitted that faith which I had hitherto advocated to the world" (186). "I had never been really a monk" (254). "At Capua, I foresaw a persecution against me" (237). "At Naples I was continually attacked by false reports" (257). "I had occasion to leave Naples on account of important business which called me to Rome in 1841. I set off with the intention of returning again at the end of a fortnight, but while I was on the point of leaving Rome to return to Naples, I was arrested by the Inquisition. If this had not befallen me, I should have returned to Naples, enjoying a little world of my own"<sup>e</sup> (261). "When I was afterwards in the power of the Inquisition, the inquisitors spread reports relating to other accusations than those originally alleged." A report was circulated that I had been guilty of other crimes than those for which I was placed in the Inquisition" (20).

says the sentence for heresy is inevitably burning, yet not only admits his own sentence was a "slight correction," but does not dare to state (what the best authorities say, could not be stated) that a single case had occurred of a capital punishment by the Roman Inquisition. He declares the Church connived at immoralities, yet says he was placed in posts which gave him full power to correct them, and that he was known as constantly complaining of them! He says he writes under no vindictive feeling, yet takes care to say something injurious against every one who ever reproved him; and his book teems with charges the most shocking and shameful against ecclesiastics, whom every traveller in Italy knows are men as venerable for their virtues as for their age, and who even Lord Campbell felt compelled to say were men eminent for learning and piety. He tells a stupid story about a woman being ordered on her salvation to "denounce" her husband to the Inquisition (what on earth does that mean?), and yet discloses that she disobeyed the injunction (and told the party who gave it that she had done so, and should do so), without the slightest inconvenience following! It is, in short, a book crammed with coarse calumnies, the malignity of which are only equalled by their monstrosity; and such, in short, is its absurdity, that it can scarcely impose upon the meanest minds, except by reason of its pandering to the vilest and most vulgar prejudices.

<sup>c</sup> Then it could not have been for heresy he was sent away from Viterbo.

<sup>d</sup> The witness Giustini swore her acquaintance with him commenced about 1830, and lasted a year or so, and was known to other parties.

<sup>e</sup> Then it was not voluntarily he left the Church.

“A process was got up against me before the Inquisition in” 1842 (33).<sup>f</sup> “There no one, not even the dearest friend, can afford protection or support: there every accusation has to be fully entered into. The accuser gives his name to the tribunal, the same with the witnesses.<sup>g</sup> They began in this manner with respect to myself. The first attack against me was made at Viterbo,<sup>h</sup> in concert with certain parties at Rome, and some of the Dominicans from Naples”<sup>i</sup> (37). “Documents were laid before the British consul at Rome, by my friends, while I was in prison, proving the falsehood of the accusations laid to my charge at Viterbo”<sup>j</sup> (79). “In July, 1842, I was released, by order of Pope Gregory, from the prisons of the Inquisition” (1). “I was set free for want of any definite charge being established against me: I was still under strict surveillance” (266). “In September I was near Nazzano. I set off for Ancona. I left Ancona on 4th October, and two days afterwards reached Corfu. I was fortunate enough to get included in the passport of a family, with which I travelled without any separate mention of my name: this was a necessary precaution to insure me from molestation on the road” (268). “There the Papal consul demanded my expulsion as having been guilty of enormous crimes. Several of the Maltese at Corfu had at one time taken into their heads to follow me in the streets with insulting and threatening words” (269). “I opened the Italian church in Corfu, in 1844, with Bandiera at my side. He and his brother, two dear friends, at the head of a few Italians, embarked from Corfu, and landed on the shores of Calabria, where, in a skirmish with the troops of the king, they were taken prisoners and put to death” (270). “I was closely united with the brothers Bandiera. When my friends set out for Calabria, I took my departure from Corfu, to settle at Zante. It was settled that I should there receive communications and instructions from them as to my future proceedings” (275). “At Malta, an article in a journal proposed to the people to welcome me with cudgels, stones, and other offensive missiles; and another which accused me of being an impostor and hypocrite. I opened the Italian church and published my writings. “These proceedings silenced the reports against me” (282—3). “Some English clergymen, and others who called themselves Protestants, were afterwards induced to oppose themselves to me” (288). “The renowned Cardinal Wiseman, the archbishop of Westminster, according to the Pope’s creation, has published an article against me in the *Dublin Review*”<sup>k</sup> (76).

Sir *A. Cockburn* stated that that was the case for the defendant,<sup>l</sup> and the Court then (at a quarter past eight o’clock) adjourned to half-past nine o’clock to-morrow.

<sup>f</sup> Which could not have been for heresy.—See former notes.

<sup>g</sup> The reader will remark how striking is this testimony to the fairness and impartiality of procedure of the Inquisition, as to which see notes to the judgment.

<sup>h</sup> The place to which the evidence of Giustini refers; and he afterwards shows that this accusation was not for heresy, as, outwardly, he was zealous in teaching the Romish doctrines.

<sup>i</sup> Where the affair of the Principes occurred.

<sup>j</sup> Where he says he never disclosed any heresy.

<sup>k</sup> Which expressly refers to this article in the *Dublin Review*.

<sup>l</sup> Which was most materially confirmed by the last piece of evidence adduced—the book. Unhappily, however, its numerous confirmations were not put to the jury.

## THIRD DAY.

The Court sat at the usual hour.

Sir A. Cockburn.—My Lord, I beg to tender in evidence the *Dublin Review*, for July, 1850, to show that the charges contained in the libel were published some time ago, and with specific references to facts and dates, proving that the prosecutor has had ample opportunity of meeting these charges, and also showing that they were not got up for the justification of Dr. Newman. The *Attorney General* objected. Lord CAMPBELL.—I do not think it is evidence. Sir A. Cockburn.—Perhaps the same proof is contained in Achilli's book.

Giovanni Giacinto Achilli<sup>m</sup> was then called, and examined by the *Attorney General*.

The *Attorney General* first asked him whether he would give his evidence in English or Italian? to which he replied, "I would prefer to give my evidence in English, but as I cannot speak fluently in conversation," I would prefer being assisted by an interpreter." Sir A. E. Cockburn observed that Dr. Achilli could preach in English. The *Attorney General* said, reading a sermon was a different thing. Lord CAMPBELL said, no doubt the witness would give his evidence best in Italian. The prosecutor was then examined by the *Attorney General*.—I am 49 years of age. I was born at Viterbo. I was educated in the Roman Catholic faith, in the College of the Jesuits at

<sup>m</sup> The *Times* thus described him: "He is a plain-featured middle-sized man, and his face is strongly Italian. His forehead is low and receding, his nose prominent, the mouth and the muscles around full of resolution and courage. He wears a black wig, the hair of which is perfectly straight, and as he close shaves, this wig gives to his appearance a certain air of the conventicle. His eyes are dark and deep set; and with his black wig, sallow complexion, and sombre aspect, leave an impression upon the mind of the observer by no means agreeable, and not readily to be forgotten. Judging of his intellectual powers, from his physiognomy and mode of giving evidence, one would be led to say that he was a man of considerable penetration and acuteness. The questions put to him by his own counsel he answered with great clearness, and in a calm, unwavering, quiet manner, without any trace of strong excitement, or feeling deeply roused. Sometimes a slight contemptuous smile accompanied his denials, and once or twice he seemed to treat points angrily. His general bearing was cautious and careful—replying with great reflection and precision."

<sup>n</sup> It had been already proved that he could speak well enough in English in common conversation.—See the evidence of the witness Logan.

<sup>o</sup> No doubt he would "prefer" it; the reason is obvious: the process of interpretation is tedious, and interposes not only great opportunity for reflection upon the replies to be given, but breaks the force of cross-examination. It was remarked, that when a little excited, he would constantly commence an answer in good English, and then turn to the interpreter, and put it in Italian. And he soon became even himself so wearied with the double process of interpreting questions and answers, that he begged the questions might be put in English and answered in Italian. Thus he secured himself all the advantages of both systems,—hearing in English, answering in Italian,—to his own satisfaction, no doubt. In every conceivable way the Court shielded him.

Viterbo. I entered into the Dominican convent of La Querci, at Viterbo, as a novice, in the year 1819. I was then sixteen years old. I remained there as a novice a little more than a year. I then became a professed monk of the Dominican order.<sup>p</sup> After that, in 1821, I went to Lucca to pursue my studies there. In 1824 I entered into priest's orders. I was then under the canonical age. I obtained my orders, being under age, by a dispensation from the Pope. It was at the solicitation of the duke of Lucca. In the same year I went to Rome to pursue my studies at the College of Minerva there.<sup>q</sup> In the early part of 1827, I was sent to Capranica to preach the Lent sermons. Capranica is in the diocese of Sultri, in the province of Viterbo. I was appointed by the bishop of Sultri. I have got the patent of my appointment here.<sup>r</sup> In the spring of 1827, I received an appointment as *Lector Philosophiæ* in the seminary of the bishop of Viterbo. The appointment is here. I commenced my duties in November, 1827. I remained there discharging my duties till 1833 inclusive. On the 6th of October, 1832, I was appointed by the Master of the Sacred Palace to be his vicar in the diocese of Viterbo; and, among other things, made me not only censor of the press, but president of the censorship. I have got here an appointment of vicar from the Master of the Sacred Palace. In 1833, I obtained from Cardinal Valzi, bishop of Monti-Fiasconi, unlimited authority to confess persons of both sexes in his diocese.<sup>s</sup> That gave me authority to impose penance and to give absolution. In the same year, 1833, I was appointed, by the general of the Dominicans, prefect of studies and head professor of the College of Minerva at Rome. I have got the appointment here. At the end of 1833 I left Viterbo with the provincial of my order, on a visitation tour of the Dominican

<sup>p</sup> Such early profession is not usual.

<sup>q</sup> The Dominican seminary. A splendid library was founded for public use by Cardinal Casanata, in the Dominican convent of St. Maria sopra Minerva. The printed books, in 1838, numbered 180,000 volumes, besides manuscripts. Some inedited writings of St. Thomas Aquinas have been discovered here. Here also is a complete collection of prints and engravings, amounting to several thousands. There are six rooms filled with books; the chief hall is 300 feet long.—*Reminiscences of Rome*. The church of the convent is a magnificent edifice, containing many chapels, one of which contains the body of St. Catherine of Sierra, the St. Theresa of the Dominican order.

<sup>r</sup> The Attorney General carefully refrained from asking, and Sir A. Cockburn, amid all the embarrassments he had to encounter under a partial judge and prejudiced jury, who were watching when they could interrupt him, omitted to ask how long Achilli exercised the offices thus alleged to have been conferred. And the value of the mere evidence of appointments, may be appreciated from a passage in the history of Titus Oates. "He took orders, and officiated as curate in several parishes, and as chaplain on board a man-of-war; but all these situations he successively forfeited in consequence of his misconduct (yet no doubt he produced his appointments as proof of character). Houseless and penniless, he applied to Dr. Tonge, a man in whom weakness and credulity were combined, with a disposition singularly mischievous and acute; and who deemed it his duty periodically to warn his countrymen of the designs of the Jesuits. In Oates he found an apt instrument for his purpose, and it was arranged that he should feign himself a convert to the Catholic faith. He accordingly obtained a place in the college of English Jesuits, but the habits of Oates did not accord with the discipline of a college, and after a trial of five months he was disgracefully expelled and injured."—*Lingard*, vol. xii.

<sup>s</sup> Another diocese. Be it observed, he never remained long at any place.

convents in Tuscany.<sup>1</sup> I was engaged on that visitation tour about a year. I returned to Viterbo in November, 1834, when the visitation tour was ended. I then stayed in my own convent at Gradi, with the provincial. I remained at Viterbo only a few days on my return. I was then appointed visitor of another place. In 1827 I was chosen confessor of the governor of Viterbo by the apostolical delegate. During the whole time I was at Viterbo, and down to 1833, I continued to act as confessor to the governor. The general authority to confess, which I had at Viterbo, was renewable from year to year; and it was renewed from year to year down to 1833. When I returned to Viterbo, in 1834, I remained a few days, and was appointed visitor to the convent of Nepi. I was engaged there four weeks. I then went to Rome. I arrived at Rome in the month of December, 1834. In 1835 I had two patents to preach the Lent sermons. I have got them here. One was from the cardinal archbishop of Capua. The authority was to preach at his cathedral at Capua. The other was from the same cardinal to preach Lent service in the church of St. Maria di Capua, a collegiate church. I have them here. I also received authority to confess persons of both sexes. That was an appointment during pleasure. I held that appointment all the time I was at Naples. In 1835 I obtained letters of secularization from the Pope. I produce them. I did not immediately avail myself of them, because I was requested by Cardinal Acton to remain a little longer in my order, till I had better tried my vocation." After I had the letters I went to Naples and lived in the Dominican convent for four years. During that time, in the month of June, 1833, I went to Rome. I stayed only a month at Rome; with that exception I stayed all the time in the Dominican convent at Naples. In the month of June, 1833, I was confessor to the princess of Saxony, Duchess de Bourbon. In February, 1837, I was made free of my order in the province of Naples. I have a minute of my incorporation. I was affiliated. I produce the minute. On the 3rd of August, 1837, I had a patent constituting me to be prior of the convent of St. Pietro Martyrio, Naples. Before my appointment I was sub-prior. This was by the provincial of the order. There is in it, and also in another document, a clause absolving me from all excommunication; that is a clause which is put in all patents which have the power of conferring any jurisdiction. I was also appointed by the provincial to be his commissary in a cause to be tried in the Convent del —, near Naples. On

<sup>1</sup> The peregrinations of other friars or priors of the Dominican order, have produced blessed fruit. "Who," says Digby, "could describe the fruits of peace which followed the steps of a Friar Lawrence of England, or a St. Vincent Ferrer (who came to England), who never left a town without having chased from it the demon of discord, and re-established peace, order, and harmony, and who passed as an angel of peace through Spain, France, Italy, Savoy, Switzerland, England, and Ireland; or of a Raymond of Capua, 23rd general of the order; or he who afterwards governed the Church as Pope Innocent V.; or he who afterwards was Pope Benedict XI. Thus, in 1299, Brother Angelo of Faventia, prior of the Dominicans, made peace between Bologna and Romagna. So Friar John made peace in Verona, Vicenza, Mantua, Padua, and Bracca; and the treaty he drew up between the Guelphs and Ghibellines may be seen in Muraton." (Art. 9, Ital. iv. p. 117). Oh, let no one take their idea of the religious orders from the life of Achilli or his associates! Very different scenes and occurrences characterize their history!

"Sir A. Cockburn asked the reason, on examination.

the 15th of December, 1838, I was also appointed commissary to conduct an election in a convent at Naples. In 1839 I completed my secularization. I remained at Naples after that as a secular priest for about two years. In 1841 I went to Rome. I arrived in Rome from Naples in the year 1841, but I do not recollect the month. In the spring of 1842 I was imprisoned in the Inquisition. I remained in the prison of the Inquisition at that time about three months. I then went to pass the summer in the country near to Rome. I afterwards went to Ancona. From Ancona I proceeded to Corfu. I was assisted in getting from Ancona to Corfu by Boccheciampi. I met him at Ancona, and he said to me he was going to the Ionian Islands. I told him I was going the same way, but I had no passport. He said I might make use of his, because he had a passport for five people, and they were only four. So I took no name, but was No. 5. I remained at Corfu about a year and a half. I went from Corfu to Zante. I remained at Zante about a year and a half; that was till about July, 1846. I then went to Malta. From Malta I came to England. I came to England for the first time in May, 1847. I was then appointed professor of the Malta College. I went to Malta, and acted in the duties of my professorship. I returned to England in June, 1848. I remained in England at that time till January, 1849. I then went to Rome. I was married at Rome on the 24th of June, 1849.<sup>v</sup> I married Miss Heley, an English lady, who had been educated in Italy. Soon after my marriage I was again put into the Inquisition. I remained in the Inquisition about six months. I was at the Castle of St. Angelo. I was taken out of prison under pretence of giving testimony in a political cause. The French authorities interfered in my favour. After I left Rome I came to England, where I have remained ever since. I have since been minister of the gospel at the Italian Protestant chapel, in Dufours'-

<sup>v</sup> The validity of manner depends on the *lex loci*. To be valid, this marriage ought to have been in conformity with the laws of the then existing republic. But the republic had passed no new marriage law: marriage was just as it had been under Pope Pius, and as it is now; and to be valid, it was necessary that it should be celebrated before the parish priest. Again, the republic had not revoked the law (part of the civil law) which makes a marriage contract by a friar or priest invalid. By the law of the republic, a Roman subject or a priest was incapable of legally marrying. Nor could it be considered as a marriage between strangers and aliens. Achilli had never been naturalized in England; he was a Roman subject, subject to the Roman law. The *lex loci* did not apply; the marriage was not celebrated according to the law of this country. The officiating elder was Saccares, who was so summarily sent from the Protestant College at Malta. It is fair to add that, in 1850, Achilli was legally married to the same lady at St. Martin's Church.

<sup>w</sup> In his narrative, he says, "In 1841 I had troubles with the Inquisition, the result of which was, that being weary of serving in the ministry of the Roman Church, I separated myself entirely from that office, and made to the Inquisition my renunciation for perpetuity of all the honours and emoluments which I had enjoyed up to that time. The Inquisition, on its part, drew up a decree of dismissal for perpetuity from all the branches of my ministry" (p. 8.) The reader will observe this account is quite consistent with, and confirms the decree of the Inquisition and the recital of his confession, for renunciation is an equivocal phrase, and may mean confession of a criminality necessarily involving perpetual renunciation; and a comparison of the language of the decree will show a striking coincidence. But let the reader particularly observe, the narration admits a decree of dismissal; the jury found the fact of a decree of deprivation; and he swore in court he never was deprived at all! See his affidavit also.

place, till two weeks ago. I have never been deprived of any office for any cause.\* Neither in the month of February, 1831, nor at any other time, did I ever know a person named Elena Valente Giustini. While I was at Viterbo, I never robbed of her honour any young woman at any time. I knew a family at Viterbo of the name of Gentili. There are two families there of the name of Gentili—two brothers. At that time the only woman of the name of Gentili was the wife of Count V. Giulio Gentili. Neither of the family lived in the country. I did not pass my country month, 1831, with the family of a Gentili. It was my custom in the month of October to pass my time at the country-houses of my friends or relations. These families were in Zelli, Cristofori, and Tekeschi. I believe I passed the month, in 1831, with two, if not all three of them. I do not know of any country-house of the Gentili. In neither of these three families was there a servant girl with whom I went out to any place. I never went with any servant girl to a place where the two Gentilis were shooting. Now look at that woman Elena Valente, now Giustini.<sup>7</sup> Do you know that woman?—I have never seen her! Elena Valente or Giustini—all these questions have been directed to her? I never saw her! Sir *A. Cockburn*.—You ought to repeat the questions in the presence of the woman. The *Attorney General* (in English).—Have you ever had criminal intercourse with that woman anywhere?—No; never. In any place in the world? No. Sir *A. Cockburn*.—The questions ought to be put in Italian, that the woman may understand them. The *Attorney General* (through the interpreter in Italian).—Did you ever see that woman in the sacristy of the church at Viterbo? No. Sir *A. Cockburn*.—Let her be placed where the jury can see her.<sup>7</sup> The *Attorney General* objected.<sup>8</sup> Sir *A. Cockburn*.—It is very hard, that as he is brought to contradict her on oath, the jury may not see her countenance. The *Attorney General*.—You excluded the prosecutor while the witnesses were being examined against him. Sir *A. Cockburn*.—But now they are confronted; surely the jury should see the countenances of both! The *Attorney General* again objected, and being supported by the Court, continued his examination of Achilli. Have you ever seen her in the house of a relation of yours? No. Have you ever had criminal intercourse with her? No. Did you ever give her any pocket-handkerchiefs and sausages? No. I

\* It is to be observed these answers were so many formal negatives of the charges in the plea, following the precise words there used, like his affidavit.

<sup>7</sup> The first witness, who was now sent for into court: when she came in, she was placed opposite Achilli, with her back to the jury, who could not see her. She looked at him with an air of innocent wonderment as she heard him quietly contradicting all she had sworn. See her evidence and her cross-examination as to the Gentilis, which Sir *A. Cockburn* contended confirmed her.

<sup>2</sup> The reason was that every one remarked the truthful character of her countenance, and her shocked expression at the assertions of Achilli.

<sup>8</sup> The objection spoke volumes to the hearer, and will to the reader. Achilli's counsel shrunk from any real confronting of him and his accusers. It was apparent to every one present that he nerved himself by a powerful effort to meet them; his hands moved, and his countenance worked convulsively, and strikingly contrasted with the quiet and composed aspect of the woman, who looked "more in sorrow than in anger." So much did the Attorney General dread the effect of her countenance on the court and jury, that directly he had finished his questions respecting her, he peremptorily ordered her out of court. And such was the witness whose air of truthfulness he durst not contemplate or fairly face—to whom he imputed perjury!



am not speaking of any presents given at any time, but as rewards for criminal intercourse? Certainly not. I have not at any time given such things to any one. You have not given a handkerchief at any time? Perhaps I may have given an old handkerchief to a poor woman. Do you know a person of that name? I know one<sup>b</sup> of the name of Rosa di Alessandris, a nun, a relative of mine, of St. Bernardino, in Viterbo. Were you ever found guilty of having debauched, seduced, and robbed of her honour Rosa di Alessandris? The one of whom I have spoken is older than I am in age. That is no answer. (Question repeated.) With her I could not commit any sin, because she is shut in a nunnery. LORD CAMPBELL.—ANSWER the question! I never was found guilty of having debauched, seduced, and robbed of her honour a woman of that name. I know of no other woman of that name except my relative. I never had carnal connection with Rosa di Alessandris, in the sacristy of the church at Gradi, or anywhere else. I never gave any money to the father of Rosa di Alessandris as hush-money. I think I was a child of five or six when the father of Rosa di Alessandris died. In the month of July, 1834, did you debauch, seduce, and carnally know a woman whose name is unknown, and who was before chaste?<sup>c</sup> (Laughter.) No. In 1834 I was on my tour with the provincial, and returned in November to Viterbo. In 1835, while resident at Viterbo, in the neighbourhood of Monte Fiasconi, did you debauch, &c., one Vincenza di Guerra? In 1835 I was not at Monte Fiasconi, nor at Viterbo, nor do I know Vincenza Guerra. Did you debauch any woman at Capua? No. I was at Capua in 1835, occupied preaching morning and evening. I resided in the house of the cardinal archbishop. I resided all that time under the eyes and nose of the archbishop. Did you, in that year, or at any other time, have any connection with any woman who was “chaste and unmarried.” No. (The witness Principe, now Balisano, was here brought into court.) I am now going to ask you about Naples in 1840. Do you know that woman?<sup>d</sup> No! You were in 1840 living at Naples as a secular priest, having obtained your letters of secularization? Yes. Did you ever see that woman in the sacristy of the church at Naples? No. I have never seen that woman. This is the very first time I have seen her. The *Attorney General* (handing to him the paper which had been identified by Principe). I know this paper very well. The filling up in writing is mine. This paper was given for an image in the church of St. Pietro Martyro to collect money. I did not collect the money, but there was one specially charged to do it. Persons came to write their names, but they did not come into the sacristy; they stayed at the door. I never had connection with that woman in the sacristy, or in any rooms off the

<sup>b</sup> The reader will remark the peculiarity of the answers in this and other instances.

<sup>c</sup> The Attorney General, in repeating the different averments of the plea, made merry with their formality, to hide the formality of his questions.

<sup>d</sup> Similar remarks apply in this as in the former case. The *Times* stated,—“The effect produced by these meetings was dramatic, the poor women eyeing their alleged seducer with half-timid yet steady glances, while he, his face overspread for the moment with a slight pallor, turned upon them eyes that seemed to pierce through them.” The impression made upon every one in court by this confronting was the reverse of unfavourable to the witnesses; and the Attorney General, conscious of it, did not venture to repeat the experiment. He did not dare confront Achilli with Principe and her mother together, nor with any of the English witnesses.

sacristy, or anywhere. Do you remember, while you were at any time walking in a procession, the mother of Principe addressing you? No. Were you ever before the police on the subject of any charge made against you respecting Principe? No. You were never before the police on the subject of the charge? No. When I came away from the Dominicans the brethren began to make war upon me, and they spread charges against me. I made no account of this, as is my custom. My friends, irritated at such proceedings, tried in every way to subvert and destroy such charges. Did the duke of Lavrino interfere? Sir *A. E. Cockburn*.—How can he swear to what the duke did? Lord CAMPBELL.—Unless he were present. The *Attorney General*.—Had you communications with the duke on the subject? With all my friends. Were you ever before the police with the duke of Lavrino and your friends? No. In Corfu did you know a tailor, named Garimoni? Yes. Did the wife live with her mother? Yes. Did you live next door to them at Corfu? Yes. Did you ever commit adultery with Garimoni's wife?<sup>e</sup> No. I remember a fact that happened.<sup>f</sup> One night I was passing before the house of the wife of Garimoni. She was at the door and called me, asking me to answer certain questions. She began to ask these questions, when we were surprised by her husband. The questions were but begun, but not finished. I believe she meant to ask me if I had heard any noise in her house on the previous night; and I believe she alluded to certain screams or cries that in fact I had heard. Before the questions were finished Garimoni came up. He began very furiously to inveigh against his wife. I was at the door of the house. It appears to me that he pushed me inside the house.<sup>g</sup> Certain it is I made a step within the door. I reproved Garimoni for this his bad conduct to his wife. I made way with my hands and got out. That is the only occasion I was ever in the house. I never met her in any place. Was any complaint made against you for adultery with her? Some days after I heard that Garimoni spoke against me through the city. I went to complain to the secretary of the lord high commissioner, Mr. Fraser. Do you know anything more of your own knowledge, as to Garimoni and his wife? I have heard that Garimoni wrote certain letters, but no more.<sup>h</sup> When you were at Corfu had you two persons in your service, Coriboni and his wife? Yes. They remained in my service all the time I remained at Corfu, and all the time I remained at Zante. They did not come with me to Zante, but they came some weeks after I had gone. I knew Mr. Reynolds at Zante very well. I did duty in a chapel at Zante. Mr. Reynolds was one of my congregation. I lived near him. His house did not look into mine, but mine did into his. My house was higher than his, and I could see his house only from my upper windows. There were two upper

<sup>e</sup> It was remarked at the bar that this was a case in which the police proceedings precluded total denial.

<sup>f</sup> The reader will observe how strongly all this confirms the witnesses for the defence, and let him compare it with the cross-examination of Garimoni's wife, who quite contradicted him. Lord Campbell never remarked on these discrepancies.

<sup>g</sup> Even this is quite consistent with the story told by the witnesses for the defence, for they said Garimoni tried to detain Achilli, and this "pushing in," which he speaks of, may have been as he was pressing out.

<sup>h</sup> The reader will observe the evasive character of the answer, and the cautious way in which the next question is conceived.

windows. I think it would have been necessary (for me) to have put the person out of window to be seen. I never committed any indecency with Coriboni's wife. Did Mr. Reynolds ever remonstrate with you on any conduct of yours towards her? *Non mi ricordo.*<sup>1</sup> I recollect that Mr. Reynolds, after an event that happened between us, did speak to me relative to the persons in my service. I had in friendship and charitably given some slight reproof to Mr. Reynolds because he was in the habit, at that time, of drinking a little too much in the evening, and being drunk. (Laughter.) The first time it appeared to me that he received it (the reproof) with resignation. At the second time he became a little displeased. After this he began to absent himself from the congregation. After a certain time I saw no more of him at my congregation. After the reproof I went to pay him a visit, to make friends with him again, and then he, assuming an altogether serious tone, began to reprove me about my servants. He said that they had been, before coming to me, persons not of good morals. I answered *that I should be satisfied if they behaved well while they were in my house.*<sup>1</sup> I begged him to tell me if he had anything to say against them at that time. I remember that he himself spoke in eulogy of them,<sup>k</sup> only he would have me, at his will, send them away. Coriboni lived with his wife in the house with me. They had a child. Coriboni's wife never slept with me. She never dined with me. I never told Mr. Reynolds that Coriboni's wife, "poor Albina," was going to dine with me. I never walked arm-in-arm with her in the public streets. The band used to play late at night. I never went with Coriboni's wife, late at night, to hear the band play, nor did I ever go alone. My congregation increased very much after Mr. Reynolds left it. I continued to do duty in the chapel about six or seven months after he left—as long as I continued in Zante. I did duty in the chapel to the last moment I was at Zante. The congregation increased up to the last moment. Do you know that woman (Principe's mother,<sup>1</sup> who was now placed opposite him)? No, no, no; I do not know her at all. When I left Zante Coriboni and his wife left my service. When I was at the college at Malta there were two priests there, Saccares and Leonini. They had been converted from the Romish Church. The accusation against Saccares and Leonini was made while I was in London, and the alleged faults were committed while I was away.<sup>m</sup> The accuser was an Armenian priest, to whom, according to my judgment, no credit ought to be given. I was charged by the committee of the Malta College in London to make inquiries into these charges, although

<sup>1</sup> Here, again, the reader will remark the reply.

<sup>1</sup> This answer excited so much attention, that Sir A. Cockburn caused it to be repeated, and specially animadverted upon it in his reply. It need scarcely be said, that Lord Campbell took no notice of it in his charge.

<sup>k</sup> The reader will appreciate the probability of this, after the admissions already made by Achilli, and the evidence of the other witnesses, as to the woman's character.

<sup>1</sup> She had been brought into court directly after the daughter, and the Attorney General did not confront them together with Achilli, and delayed for some time confronting them at all, during which time the poor woman sat in court; and, of course, Achilli had time to prepare for it, and was evidently bracing himself up for it; but his hands and his face evinced considerable agitation of mind.

<sup>m</sup> It was stated in the evidence for the defence that Achilli was residing in the house with these persons at the time.

I had advised the secretary of the committee not to institute proceedings against these accused persons. I gave as a reason because I knew very well the character of the accused, and that no credit ought to be given to the accusation. I afterwards investigated the matter on my return to Malta. My result was that there was not any credit to be given to the charge, and I have pleasure in adding that neither Mr. Hadfield nor any other person has ever found that the charges were true. It appeared that our inquiries were finished when it came to my knowledge that they were continued still on the part of Mr. Hadfield. I complained of this to him and to the vice-principal. The principal answered that he had been charged by the committee thoroughly to investigate. I sent Saccares somewhere. Before I sent him I communicated to Mr. Hadfield that Saccares was going on a commission into Sicily.<sup>a</sup> I did not send him away to hinder and stifle the investigation. Were you implicated in the charges? I fancy not; as they were in Malta, and I was in London. As far as I know I was not implicated in the charges. Were you dismissed from the college of Malta for several acts of vice and immorality? No. Did you ever preach against the laws of chastity and morality? No. You were not an infidel? I believe not.<sup>o</sup> Was there ever a time when you did not believe in the truths of Christianity? No. Lord CAMPBELL.—Was there ever a time when you did not believe in the divine mission of our Saviour? No. The *Attorney General*.—After your marriage you came to this country with your wife? Yes. I was lodging, when in England, in 1847, at No. 3, St. James's-street, at the house of Miss Lambert. I knew Catherine Gorham there. I never took any liberties with the servant of Miss Lambert. When you came to England with your wife where did you live? I was living at No. 20, Northumberland-street; afterwards in Shaftesbury-erecent: I had there a servant named Harriet, I think. I never conducted myself indecently to Harriet Harris. I never attempted to seduce Harriet Harris. I think I had a servant named Jane Legge. I had two of the name of Jane. One followed Harriet Harris. That Jane lived about six months or so, but I do not recollect exactly. I never had criminal intercourse with her. I never behaved indecently to her, nor did I ever attempt to seduce her. I remember Sarah, who came from the House of Mersey, at Windsor. I never had criminal intercourse with her, nor attempted it. You were in the prisons of the Inquisition upon two occasions? Yes. Was there any proceeding in the courts of the Holy Office against you? No; (correcting himself) Yes. The first time you were at the Inquisition, were you questioned by the Inquisition? Yes; every day. Lord CAMPBELL.—What charges were made? I was charged with regard to my teaching in the school, and in the pulpit, and in my conduct in the confessional. The *Attorney General*.—Was there any charge brought against you except upon account of your teaching? No. Not for your moral conduct? No; the Inquisition is not competent to judge of those offences.<sup>p</sup> I do not ask what passed when you were not present, but were you to your face never charged in the Inquisition with immoral conduct? No. Personally? No.<sup>q</sup> Do you know of

<sup>a</sup> By a letter written the day he went away, and which of course could not be received till he had left.—See the cross-examination.

<sup>o</sup> A Mahomedan could say the same.

<sup>p</sup> This is in direct opposition to the evidence of the bishop of Southwark.

<sup>q</sup> Perhaps not, literally; but suppose the proceedings were in writing, and

any charge of immorality being made against you to the Inquisition? No. Did you ever hear of such a charge made against your moral character? I think not. Did you ever make any confession to the Inquisition of having had carnal intercourse with any women at Viterbo or elsewhere? No. (The judgment of the Inquisition, which had been put in yesterday, was here shown to him.) You see the statement there of your confession, and throwing yourself on their mercy? Yes; I see it. Did you make any confession, and throw yourself on their mercy? No. Perhaps they might have asked me, at the commencement, whether I was content to stand or throw myself upon their mercy? Upon that supposition I should have answered "yes;" and then the chancellor of the Inquisition would naturally have written that I threw myself upon their mercy.<sup>5</sup> This is not simply throwing yourself on their mercy, but acknowledging the sentence and submitting to punishment (he reads it). I believe that the first words may be admitted, but not the last. I did not ask not to be chastised, if I merited it. On the contrary, I should desire that proceedings should be instituted in such manner as justice required. I may have said I should receive with resignation whatever orders or dispositions might emanate. I cannot admit the rest. Not the part in which it is stated or said,—if they wanted to proceed with greater rigour, your confession would be sufficient? It is probable I may have put in the first part, but not the second. The first part applies to charges as to your teaching, but not to any charge made against you about deflowering women? No. Lord CAMPBELL.—On what charges did these proceedings take place? Relative only to my teaching. Was there any sentence or judgment? No. No judgment, no sentence was pronounced upon me; only a decree of the Congregation of the Holy Office, ordered by the Pope, that I should be set at liberty. I was set at liberty under certain conditions, that I should become reconciled again to the Holy See, and, in the meantime, that I should abstain from the exercise of my ministry. This reconciliation, according to the secret instructions given, consisted in that I should write and publish some book in favour of the Roman Catholic Church. I must correct an observation I made, not having sufficiently reflected.<sup>6</sup> My incarceration at the Inquisition took place in 1841, and after my liberation I remained a certain time at Rome, and afterwards, as I said, I went into the country, in the neighbourhood of Rome. These are all the conditions upon which I was released from the Inquisition on the first occasion.<sup>7</sup>

Cross-examined by Sir *A. E. Cockburn*.—You became a monk of the order of St. Dominic in 1820? Yes. You were professed, and took the vows? Yes. What are the vows you took? The Dominicans profess one single vow; it is in these words: "I, Giacinto Achilli, promise obedience to God, to the blessed Virgin, to the patriarch St. Dominic, and to you, most Reverend Father General of the order, till

he received a copy of the charges, and confessed them? The Attorney General would have put that question if he durst.

<sup>5</sup> The reader will remark the cautious character of questions and answers here, and compare them with the judgment, and the affidavit and narrative of Achilli, *ante*.

<sup>6</sup> A remarkable expression, coupled with the fact that he carefully reflected on every reply he gave.

<sup>7</sup> The examination in chief lasted from half-past nine till a quarter to one. The Court then adjourned for a few minutes for refreshment—an opportunity of which Achilli availed himself.

death." Do you mean to say, on the oath you have taken, that you did not take a vow of poverty and chastity? (Achilli was silent, professing not to understand—question repeated.) I believe not. Are you not in a condition to swear positively on the subject, one way or the other? (Achilli was silent, professing not to understand.) Oh, you understand me perfectly! Do you mean to tell the Court you do not know what vows you took on becoming a monk? I believe the vow of obedience. Do you swear that? Yes. And that you took no vow of poverty or chastity? Yes. And that these vows are not taken by persons who become monks of the order of St. Dominic? If it is not their intention to profess and to take those vows, certainly they do not take those vows. That is not an answer! What I ask you on your oath is, whether, when persons become monks of the order of St. Dominic, they are not under the obligation to take the vows of poverty and chastity? It depends upon their own will. Is it not a necessary condition to their being admitted into the order? The necessary condition is the vow of obedience alone.<sup>a</sup> You became a priest in 1824? Yes. Is chastity part of the vocation of a priest? Yes (with a sardonic smile). You were resident at Viterbo, with occasional absences, until 1833? Yes. Now can you state that, from the time you were professed, in 1819, until you left in 1833, you had no intercourse with any women whatever? (Achilli was silent, smiling in the same manner.) Answer the question! Have you, during the time you were at Viterbo, from 1826 until 1833, had intercourse with women? (Some moments silent, with the same unpleasant smile, half convulsive.) I have not had intercourse with any women, according to the tenor of the imputation which has been made against me.<sup>b</sup> Have you had intercourse with other women besides those? (Silent, with the same disagreeable sort of smile.) The *Attorney General* objected. Lord CAMPBELL.—I cannot compel him to answer, but Sir Alexander has a right to put the question. Sir *A. Cockburn*.—Then, Dr. Achilli, I put this question, whether you had not, during your residence at Viterbo, intercourse with other women (silent),—I am not speaking of those in the libel, I speak of others? (Still smiling). I could answer, no. But I ask whether you will answer no? (Silent, with the same smile.) I am privileged by the judge not to answer. You decline to answer on the ground of privilege? I accept the privilege, and beg not to answer. From 1819 to 1833 I had no intercourse according to the imputation cast upon me. Have you had intercourse with many others? Whether I have had intercourse with others I decline to answer, because I am privileged by the judge. Did you ever have intercourse with women during that period in the sacristy of a church? No, never. Were you, in 1826, sent to Quercea for three months for penance? No. Were you, in 1826, sent to Quercea for three months? I went of my own accord. You mentioned that the provincial, while you were at Viterbo, took you with him on a tour of visitation; who was he? He is changed every two years. In 1833 was Brochetti provincial? And Spaletti vicar of the bishop? Yes. He was a great

<sup>a</sup> The reader will compare this with the evidence of the Dominican monk, previously examined, and that of Achilli's own witness, the apostate monk.

<sup>b</sup> *I. e.* according to the terms of the libel. This answer caused a visible sensation in court. Assuming him to be guilty of the crimes there charged, by swearing thus he would avoid (as far as possible) any proof of them, while at the same time, by declining to deny such offences, he would secure himself against an indictment for perjury.

friend of yours, was he not? Oh, yes. Now, at the time when Brochetti took you, had not complaints been made against you as to your moral character? (Silent.) There were charges against you? (Still silent.) Come, come, answer that! Some things may have been said about it, but I did not hear them; or if I did, it would make no impression upon my mind. Were there not charges made against you by Spaletti, the vicar of the bishop? Yes; I think there were. Some charges? Yes. Is that the man of whom you say in your book, "There was one crafty man who used to calumniate me behind my back; a certain Spaletti, vicar of the bishop: he raised various reports against me, and also made use of some Dominican monks who were displeased with my advancement"? Yes. Then he did make complaints about you? Yes. And the other monks too? I believe so; I was told so. Now, did you not go on this visitation tour to get out of the way of these "reports" or charges made against you? No, no. Did you not know, when you started on the visitation, that these charges were in circulation against you? I was then at a distance from Viterbo, and did not know what passed in Viterbo: I started from Rome. How long had you left Viterbo before you went on the visitation? Some weeks, I think. When you left Viterbo to go to Rome, did you not know of these complaints and accusations against you? There was not a word to say against me when I left Viterbo. How came you to go to Nepi in 1834? To make a visitation of a convent. Was there not, in 1834, a charge made against you of having attempted the virtue of a woman in the cardinal's house? No. Will you swear that? Yes. Have you ever heard anything of that charge? I may have heard it among other stories, but without foundation. Did you not hear it in 1834, before you left to go to Nepi? (Achilli professed not to understand.) Oh, you understand me perfectly. I ask whether that charge had not been made against you before you left for Nepi? I cannot exactly recollect whether it was made a little before or after my journey. I ask you whether you did not go to Nepi to get out of the way of that charge? No, no. What was this charge about the woman in the cardinal's house? I do not recollect; I may have heard it, but I do not know. Did you hear of such a charge being made,—it is a serious thing to have attempted the virtue of a woman in the house of a cardinal!—did you hear of it? *Non mi ricordo!* Why, is it not a thing to make an impression upon a man? No, thousands of such accusations have been made against me: I am indifferent to such accusations. Then the accusations have been made? At Rome, for instance, it was said that I had killed a nun! Now, in 1835, you obtained the brief of secularization? Yes. On condition of obtaining a patrimony? Yes. Are not the words in the brief in the plural, referring to the vows you had taken? "*Votorum.*" Do you still persist in saying that you took only one vow? Yes; that is a common form of the brief of secularization. Well, but if it be the common form, to speak of the monks' vows, do you still persist in saying that they only take one vow? There are two Dominican monks to be called; you may ascertain from them the real nature of the vow. Yes; but at present I must ascertain from you. When did you obtain your patrimony? Soon after I obtained the decree of secularization from the government. When was that? It is dated 6th August, 1839: I produce it. It is the authorization of the government,—the royal *exequatur*. Is that required by the law? Yes. That the government should concur with the Pope before a monk can be secularized? Yes. You obtained that

in 1839? Yes. And soon after you got your patrimony? Yes. Then up to that time you continued to be a monk? (Smiling.) According to the law of Naples, I was no longer a monk; and I did not then belong to the diocese of Naples. Is it not necessary to the secularization that you should get a patrimony and royal authorization, which you did not obtain till 1839? Yes. And do you then mean to say that you did not continue a monk in the interval between 1835 and 1839? No, no; I was a monk from 1835 to 1839, under a monastic vow. Now, to give effect to the Pope's brief of secularization, is it not necessary that you should be accepted by some ordinary? Yes. Was that ever done? Yes. When an ordinary accepts a secularized monk, does he not write what he has done on the Pope's brief, and return it to Rome as the record of the secularization? It is not necessary that he should write it on the same document. Is not that the ordinary course? Yes or no. Now, when you were at Viterbo I understood you to say that you never saw Elena Valente? No. Never before to-day? No. Had not the Christopher family a house in the neighbourhood of Viterbo? Yes. Was Christopher dead? Yes. Had he married a Gentili (smiling)? In the house of Christopher, where I went, there was a lady and her son. Now this lady—was she not the widow of a Christopher? Yes. And was she not a Gentili? I think so. Was she not a Gentili? (Silent.) Yes or no; upon your oath, was she not a Gentili before she married; and at that time was she not a widow? (After a pause) Yes. And did you not pass a month in the year referred to at that lady's house? Yes. Was there not a young woman named Elena Valente, a servant in the house? (Achilli professed not to understand.) Oh, you understand the question! I never saw that face before. I think I can recal it all to your recollection. Was there not a lame girl there? I do not know. Was there not a lame servant girl there? *Non mi ricordo*. I had no reason to recollect it. But the girl says she has much reason to remember you. (Laughter, in which Achilli joined.) Was there not a servant girl there at that time? *Non mi ricordo*: it is impossible to recollect. Do you remember going out to see shooting? I may have done so. I used to go out shooting. Is that part of the vocation of a monk? (Achilli laughed.) The grand vicar used to go out shooting too! (Laughter.) LORD CAMPBELL.—Sir Alexander, in Roman Catholic times bishops used to keep hounds. Sir A. Cockburn.—Not monks, my lord. (To Achilli.) Did you never take out that girl on any occasion to see the shooting? No. I took no woman with me, because I took the son of Madame Christopher. Did you ever take any female out with you? No, never. Did you never see her before to-day? Never. Have you friends at Viterbo at the present time? I do not know; because I am not allowed to keep up a correspondence. Have you relations there? Several. And you mean to say you cannot correspond with them? I cannot. Is it that they refuse to have anything to do with you? No. Have you attempted to correspond with them? Since I came to London I have not tried. You have no difficulty in getting friends for this prosecution? (Smiling sardonically) I hope that the providence of God will furnish me with the means. Yes, but Providence is expected to work through the agencies of this world. Who provides the funds for this prosecution? The providence of God. (Still smiling.) Through whom? My friends. Who are they? They do not exist yet! Explain. I mean that I hope friends will have the kindness to provide for this need of mine. LORD CAMPBELL intimated some doubt as to the relevancy of this. Sir A. Cockburn.—I mean to



show that funds are not wanting. Lord CAMPBELL.—From what I can see I believe funds are not wanting on either side. Sir *A. Cockburn*.—Have you caused inquiries to be made at Viterbo, with respect to Elena Valente or Guistini? No; nor about any other of the women named in the plea; but I have caused that which was done by my adversaries at Viterbo to be observed. Through whom? If I were to name the person it would tend to compromise him. I gather from your last answer that you have the means of communicating with Viterbo? It is not proved (smiling) that I have the means of communicating with Viterbo. I have only the means of communicating by the Roman States. At all events I understand you to say you have caused observations to be made in Viterbo? <sup>w</sup> Yes. Now I have to ask you about Rosa di Alessandris: Did you never know a person of that name besides the nun? No. I am speaking of a person with light hair, now married? No. There is no such person among the other women you will not tell me about? No. Did you ever give money to the father of any girl? No, no, never. Or caused it to be given? No. Did you ever know of the convent giving money to hush up an affair in which you were concerned? No. According to your account the monks at Viterbo were very wicked people? <sup>x</sup> I am not come here to cry out against monks. But you have cried out against them, and written against them. Yes, when time and circumstances allowed of it. But now that you are not writing but speaking upon your oath, do you abide by what you have written, that they are such profligate people? I have not said that the monks at Viterbo were so. Well, what sort of people were they? Some good and some bad. <sup>y</sup> Were you not reproved by the superior? So long as I remained among the Dominicans I was their idol. You left in 1833? Yes. In 1835 you were at Capua? Yes. When were you at Naples? After I spent a Lent at Capua. Now I must ask you whether, while you were at Capua, you had not intercourse with women? I must give the same answer as before: I said before, I spent at Capua a Lent, under the eyes and nose of the cardinal archbishop. That is not an answer to my question! I appeal to the privilege granted by the judge. Now, while you were there, under the eyes and nose of the cardinal archbishop, did you not make an attempt on the virtue of one of his chamberlains? No, never. Were you charged with it? No, never; it is quite new. As to any others, you put yourself upon your privilege? I could answer no; but I have a privilege, and I mean to avail myself of it. Do you consider a charge of unchastity a serious imputation on your character as a Roman Catholic priest, while you were one, or as a Protestant clergyman, since you have become one? I consider these are real crimes for any Christian, and I do not make much difference between a clergyman and a layman. Would you not be glad to have an opportunity of clearing yourself from these imputations, if you could do so? The *Attorney General* objected, and

<sup>w</sup> The inference of course would be, that if he could have discovered anything to the discredit of the witnesses he would have done so. Surely this was important? Yet Lord Campbell never adverted to it.

<sup>x</sup> The only ones he could know much about, since, after leaving Viterbo, he was constantly shifting from place to place.

<sup>y</sup> Which of course is, and has ever been, the truth, and is a mere truism—a truism, however, on which the whole fabric of falsehood against the Catholic priesthood or religious orders is built. No one doubts there may be bad monks and bad priests; but the history of Achilli and his associates shows that they all become Protestants. And he says he never was a monk.

Lord CAMPBELL interposed. *Sir A. Cockburn* then directed the woman, Maria Principe, whom he had previously called in, to be placed where both the prosecutor, the judge, and the jury could see her. There (to Achilli); have you ever seen that woman before this day? No. Do you mean to swear that? (Achilli looked confused under her quiet, steady glance; his hands moved nervously, his countenance changed, he hesitated, and faltered),—I see before me an Italian face (hesitating again): it is more of a Neapolitan (still hesitating): her dress confirms me in the notion that she is a Neapolitan. Did you, on your oath, never see that woman before to-day? My word is an oath: I believe the oath of a Christian superfluous. Do you mean to say that there is no sanction in an oath? No; but that my word is of the same value as an oath. Now, I ask you, on your oath, do you mean to say that you never had criminal knowledge of that woman? I do. (*Sir A. Cockburn* had the question repeated in Italian, with the same answer.) Let the mother stand forward! (Mother and daughter now stood together before Achilli.) Did you never see that woman? Never. You never saw her before? (To the interpreter: Put the question in Italian!) Never. Did not that woman and her husband call him from a procession and charge him with having debauched their daughter? No, never. Did any one call him out from a procession and charge him with a crime? No; for this reason: it is impossible to ask for any monk who is going in procession.<sup>2</sup> Was it not in consequence of the scandal caused by the incident that your friends instituted proceedings before the authorities? No. Did you make any complaints before the police? No. Did your friends, at your instigation? No, not through my instigation; but they made complaints. Did you know at the time that they were making complaints? They used to tell me they had done so. How long were these proceedings going on? I do not know; they told me of them many times. How long was it these proceedings lasted? A little time. Well, did you not learn from your friends the name of the family they had caused to be brought before the police? No.<sup>a</sup> What! did they not tell you the name of the family they had summoned before the police? They may have given me the name, but I cannot now recollect.<sup>b</sup> When you learnt from your friends that they had insti-

<sup>2</sup> The confraternity of Santissimo Salvatori, at Rome, provides dowries for poor maidens. It is usual to conduct the latter in procession to the Dominican Church de S. Maria sopra Minerva (where Achilli) was, on the 25th of March. The confraternity has filiations all over Italy, and very likely such was the procession the Principes alluded to, *i. e.*, a procession of girls, not of monks. (It is observable it occurs in March; and the Principes said the interview occurred at that time.) In this supposition Achilli's denial of the possibility of interrupting him in a procession, was of the same character as his denial of having been at the house of a "Gentili," because he had married a Christopholi! Achilli would naturally be present, but not in the procession; and neither he nor she positively alleged that he was in it, or forming part of it, but present, and assisting at some procession, not necessarily of monks.

<sup>a</sup> The reader is requested to remark this part of the cross-examination; Achilli had sworn he never saw mother or daughter: the object of this cross-examination was to test the probability of that—even assuming the charge against him to have been false, on the supposition that he would naturally hear or learn the name of his accusers; and he admitted that the charge was brought before the police.

<sup>b</sup> He was not asked to recollect the name, but whether he had been told it, or had known it at the time.

tuted a complaint before the police, did you not think it worth your while to go before the police yourself? No; I knew these things had no reality.<sup>c</sup> Now, with respect to this society at the Church of St. Peter the Martyr, was there not a book in which the names and payments of the members were entered? Yes. Did you not sometimes enter the receipt of the money in the book? Yes. You recognise the paper (handed to him)? Yes.<sup>d</sup> Did you fill up the writing? Yes. Now, with respect to the secularization, which was completed in 1839, were not charges made against you by the principal of the order? Yes. At that time? Yes. By Ancorani and Cardinal Lambruchini? Yes. These were the persons of whom you speak in your book, "Ancorani died, loaded with infamy; Lambruchini is still, for his greater punishment, among the living"? Yes. These were the persons of whom you thus speak in this Christian spirit? I speak for the purpose of making a revelation to Christians. It is sometimes necessary to give the names of persons. I ask you whether, at the time you completed your secularization, there were not charges pending against you, with the assent of the head of your order, Ancorani? When I obtained my secularization, Ancorani was not my superior. I am speaking of 1839, when you completed your secularization: were not charges then pending against you? When I exhibited my degree for secularization bitter war was declared against me. That is not an answer to my question. I ask you whether, at the time you left the order, and perfected your secularization, there were not charges pending against you on the part of the principal of your order? (Achilli, who had hesitated a good deal, here grew rather angry.) I am not come to continue these answers, which cannot have to do with what I have come to state.<sup>e</sup> Lord CAMPBELL.—The question is perfectly admissible. Sir A. Cockburn.—At the time when the secularization was perfected, were there not proceedings pending against you with the concurrence of the general of the order? There were no accusations pending—no proceedings. Were there no accusations against you without actual proceedings, which you may have anticipated? I cannot know of any accusations brought against me by Ancorani, because there were no communications between him and me. Lord CAMPBELL.—That is a precise answer.<sup>f</sup> Did you not quit the order to avoid proceedings being instituted against you? No. My petition for the royal *exequatur* was before I heard of the complaints against me. How long after the petition did you hear of the charges? A few weeks. When did you first hear of any charges being brought against you? There was some gossip talked about: I knew of this gossip after I had given the petition for an *exequatur*. Now, were you not

<sup>c</sup> But the charge was a reality, and the person who made it; and the question was, whether he had never had the curiosity to learn who it was, or to look at him? Conceive a clergyman having such a charge investigated at a police-court, and never being present to confront the girl!!

<sup>d</sup> The confirmation this gives to Principe is obvious; and it raises a strong presumption of probability that he must have seen her at the sacristy of that church.

<sup>e</sup> The reader will have observed that this is not the first time Achilli was betrayed into an expression indicating that he had come to make certain prepared statements rather than unreserved disclosures of the facts.

<sup>f</sup> If this were so, why did he not give that answer before? But see what follows.

suspended from your office of prior of the convent and ordered to go to Scureola for penance for three years? I have never been suspended from my office. I terminated my priorate in peace and good harmony with the monks, who were on the point of re-electing me again when I was secularized. When did the priorship cease? In July, 1839. Were you ordered to go to Scureola at any time for three years? After I had sent a petition to the government for an *exequatur* I received a curious letter from Ancorani. And among other curious things in it, was there an order to go to Scureola? To go somewhere; possibly Scureola. Was it not in fact Scureola? I received three orders: one to go to Benevento, another to Pensi in the Abruzzi, and the third, possibly, to Scureola. Are not these convents houses of severe observance? No; because all these are small, and wherever the family is small there is no strict observance. Did not the letter of Ancorani order you to proceed to one or other place for three years? No; because such an order is never given for a determined time. Were you ordered to proceed to one of these convents until he should permit you to leave it? All the orders so given are in this way—according to the will of the superior. Did not the letter state that the order proceeded upon the ground of these immoralities which are charged against you?<sup>§</sup> As I said, the letter of Ancorani contained many curious things—he was an old man and had lost his wits. That is what you mean by saying in your book “he died loaded with execrations,” and that he had been for forty-seven years Inquisitor, and had committed all kinds of iniquities? Did he not order you to go to the convent on the ground that you had been guilty of gross immorality? No, no. Was it so stated in the letter among the other curious things it contained? No, no. What were these curious things, then? There was, among other things, a question in which I was involved, because Ancorani wanted to bring about a reformation in Naples (Achilli caught himself up at the word reformation, and immediately added)—“to change some good habits into bad ones.” “A reformation to change good habits into bad ones!” Is that why you said he lost his wits? Now I ask you, when you were at Naples,<sup>h</sup> did you not have intercourse with several women? To the same question I return the same answer.<sup>h</sup> How came you to leave Naples in 1841? (Achilli affected not to understand.) Oh, you understand! I ask what caused you to leave Naples in 1841?<sup>i</sup> (Still he paused, and assumed an unintelligent look.) You understand me? It was for family matters (hesitating). I went there with the intention of going on to Viterbo. Why, you were arrested, were you not? No, afterwards; not then. Were you not arrested by the police at Naples, and taken back to Rome? No. Do you mean to state that deliberately? (He hesitates). That you were not arrested, and taken back by the police to Rome? No. Where were you arrested? At Rome. Were any proceedings instituted against you at Naples? No. Were you removed from the Neapolitan dominions? No. Nor taken out of Naples? No. Neither then nor at any other time? No. In September, 1840,† were you not

<sup>§</sup> The reader will not fail to remark these answers, and particularly the next!

<sup>h</sup> It will be recollected, the Princes' case was alleged to have occurred there.

<sup>i</sup> The object of this part of the cross-examination was to show, that after the scandal caused by the Principe case he was removed from Naples.

conducted by the Neapolitan police out of Naples, and a passport given you to Rome? Never was I conducted by the police of Naples out of the territory of Naples.<sup>j</sup> I left Naples in company with an uncle of mine. I went as far as Fransoni, a town between Naples and Rome; I stopped there, and then returned to Naples, without having heard a word from the police. Now attend! did not the police direct you to leave Naples, and give you a passport for Rome, and did you not leave Naples and go back again secretly? No; I never was told by the police in this matter to leave Naples at all. I asked for my passport from the Minister for Foreign Affairs, and he sent it to me; and with that I went to Fransoni, and then returned openly to Naples. If you got a passport to Rome, why did you return to Naples? Because I was lame. I had something the matter with my foot, and as a proof of this when I returned I was obliged to keep my bed. How long? I do not know. On the second occasion, did not the police remove you from Naples? After I got well I returned freely, and began again my journey for the same purpose that had induced me to begin the first. That is a long answer! I wanted a short one—yes or no—to this question: did not the police remove you from Naples after you had returned there from Fransoni? The police had not given any such orders. Now how long were you at Rome before you were arrested? I was a few weeks in Rome, and then I left it and went into the neighbourhood. How long was it after you went there that you were arrested? (Achilli hesitated.) LORD CAMPBELL.—How long was it after you went to Rome before you were arrested? Several weeks. Sir *A. Cockburn*.—Were you arrested in Rome? In Rome. Had you any office at that time in Rome? Having left the Dominican order, I had therefore renounced all those employments I had held while I was in the order.<sup>k</sup> Does the Minerva College belong to the order? Yes. Had your professorship there been appurtenant to the Dominican order? Yes. Now, as to the proceedings in the Inquisition, you say no charge was made against you on the score of immorality? No. You say it is not within the jurisdiction of the Court? It is not. You never admitted any criminality of any kind? No. Did you admit that you had preached in the pulpit, or taught in the confessional any erroneous doctrines? No;<sup>l</sup> there was no occasion. Why? Because they did not urge it.<sup>m</sup> Now answer the

<sup>j</sup> The reader will remark these replies.

<sup>k</sup> Then what honours, or employments, or emoluments did he renounce, or the Inquisition deprive him of, after this, his return to Rome, in the year 1841? He represents (let it be observed) that he lost all in 1841, for heresy alone. Yet he now admits he had nothing in 1841 to renounce.

<sup>l</sup> The object of this part of the cross-examination was to reduce Achilli to this assertion, either that there was no confession at all on his part, or no confession of immorality; and in the very next answer it will be observed, he said no heresy was charged. It is only after some reflection that he gives a different reply—that he had been charged with heresy. And then, again, he appeared embarrassed when pressed to say if there were a confession as to heresy, not only as having already denied that there was any confession at all, but as perceiving that this would be tantamount to such a charge of forgery against the Inquisition as might appear incredible. He underrated, however, the credulity of an English jury. He might well hesitate, however, for soon after he alleges that he was instructed to write a theological book—a curious commission for a convicted heretic.

<sup>m</sup> Let it be observed this was before he had professed to be a Protestant, and before he was commissioned to write a book, as he says.

question, not inferentially, but, yes or no, did you make any admission in respect of any matters with which you were charged? (He reflects.) Oh yes; about justification by faith: I was charged with having preached justification by faith. Well, did you, in respect of that, throw yourself on the mercy of the Court? (Achilli paused—professing not to understand.) Do you understand me? (He hesitated.) Did you not in respect of that preaching, throw yourself on the mercy of the Court? (He reflected, and then replied), I confessed and justified myself by St. Thomas of Aquinas. Did you throw yourself on the mercy of the Court? (He was again silent, affecting not to understand.) You understand me? I ask you did you throw yourself on the mercy of the Court? No. They passed upon you a sentence of deprivation, did they not? It is a general rule that whoever is accused before the Court, remains suspended until he comes out of it. What! if he be found guiltless? Whoever comes out of the Inquisition who is not absolutely absolved. Then you were not absolutely absolved? (He hesitates.) You were suspended? I was under surveillance. How long did you continue so? There was no time specified: it was until my final reconciliation with the Holy See. And during the time you remained under surveillance would you be excluded from the exercise of the various functions of the priesthood? Yes. And consequently incapable of any benefice or appointment in the church? Yes. Now, as well as being under surveillance, were you not ordered to remain for three years in one of the religious orders of more rigid observance? I do not know. (Hesitating.) I have not known of this condition. Lord CAMPBELL.—Was such a sentence ever pronounced upon you? No, no sentence at all was given against me;<sup>a</sup> all that was done was a decree, in virtue of which I was allowed to go out of the Inquisition. Sir *A. Cockburn*.—Surveillance was a condition of liberation? Yes. Was it not also a part of the decree that you were to spend three years in some religious house of rigorous observation? No (hesitating), not in those words, but in other words; I was advised, admonished, warmly recommended, to pass some time in retirement; to go through what is called in Rome “spiritual exercises.”<sup>o</sup> (Reflecting.) You must observe that all those who come out of the Inquisition, even those who are declared innocent, are recommended to make these exercises. What I ask you is this: whether you were not ordered, as part of the decree, to spend three years, prior to your reconciliation with the Church, to spend three years in a house of religious observance? (He hesitates.) Yes or no! No. Were you not taken to Nazali for that purpose? I went from my choice. So a man may, and yet have police officers with him! Did you? No, no. You swear that positively? Yes. Is there a house of more rigorous observance at Nazali? No (hesitating), not of strict observance, but a religious house. Did you go there in consequence of the advice so warmly given you to perform

<sup>a</sup> In his narrative, he says there was a “decree” against him; and the jury have found that, in the words of the plea, he was by a decree or sentence, “suspended and deprived.”

<sup>o</sup> Probably those of St. Ignatius; and let those who partake in the popular prejudices against the Jesuits, only read this immortal work, on which the Jesuits are formed, and an admirable edition of which, in English, has recently been published by Cardinal Wiseman, who, in his excellent and eloquent preface, at once describes the marvellous effects produced on the hearts of all who pass through these exercises (a series of meditations on the great truths of Christianity and the life of our Lord), and discloses the real causes of these results.

religious exercises? (He hesitates; question repeated.) I went also for this purpose. I went to collect myself. And when you had succeeded in collecting yourself, at the end of a fortnight, you took yourself off? Yes (with a laugh). Well, then you went to Ancona. Yes. For the purpose of getting out of Italy altogether? Yes. There you met Sig. Bocchiampi, who gave you a passport. Yes. Did you not put your own name in it? No. What was the necessity for this mystery: why did you not get a passport for yourself? I had written to Rome to a friend of mine, and he answered that the government would not give me one to go out of the Roman States; and I was recommended to go back to Rome. Well, you went to Ancona, and thence to Corfu; and you went and lived next door to Garamoni? No, not at first; afterwards. How long? Some months. How long after you went to live in that house did this affair happen about the husband surprising you at night? I lived in the first house some months; I believe it was about the middle of my stay in Corfu that it happened. Before it happened had you ever spoken to the woman, his wife? Never. Did you know who she was? (He hesitates.) Then or immediately after? I have some doubts, because I had no regard for Garamoni, and did not care much about the family. Had anything happened to cause dissension between him and you? I employed him at first as a tailor.<sup>p</sup> Where was he living?—not with his wife? No. Did you not know that? Corfu was a small town; everybody knew it. Did you not know that they had separated because not on good terms? At that time, I believe, I did not know it. Yet you say all Corfu knew he was not living with her? A fact may be known without the reason being known. At what time in the night did this surprise take place? I do not know exactly, but it was not my habit to go to my house much before eleven o'clock. Was it not nearer twelve? I cannot speak to a quarter of an hour. You say she called out to you, and put questions to you, which were interrupted by the arrival of the husband? Yes. Did you go to the door? I went near the door. Were you in the dress of a priest? No. Did she begin to put any question to you? No.<sup>q</sup> Then how did you know what she wanted? (He hesitates.) You suggested some questions as being put to you? She was about to put to me! About to put to you! then it was your imagination? Yes, from a few words. What were the few words? For instance, "have you heard" referred to the noise I had heard the night before. In your imagination? She did not use the word "scream"? No. Were you living next door? (He hesitates) No, not next door; at an angle. Did Garamoni charge you with having been in the house with his wife? Not that evening. Did he seize you? No; (hesitating) Yes (hesitating again); No. Did he not take hold of you? No, no.<sup>r</sup> Did you not try to get away! I believe he pushed against me. Did he not take hold of you, and did you not struggle to get loose? No; he had nothing to say to me, only to his wife. But did he not charge his wife in your presence with having admitted you into her

<sup>p</sup> Yet she swears positively she did not know him, which he does not venture to do, however! The reader will remark the phrase "at first" in connection with the question. Let the reader remark there was documentary evidence in this case, so a general denial would not do, as in the other cases.

<sup>q</sup> The reader will remark this reply, as compared with the other answers, and even compare these with the cross-examination of Garamoni's wife.

<sup>r</sup> Which might be for the purpose of preventing him from leaving the house, as he was going to escape; and that confirms the evidence for the defence.

company? That was his usual habit: (after a pause) he was a man without civility. Oh! I am not talking of civility!—I ask you if he did not charge his wife with admitting you for improper purposes? (He hesitated, and affected not to understand). This is the third time I have asked you, and you understand English as well as I do:—Did he not charge his wife with admitting you for improper purposes? I think not (pausing); I don't recollect his words precisely (pausing again), but they appeared to have been these: "Worthless woman! I have caught thee!"<sup>5</sup> Did he not, while he held you, make her hold the candle to you? (He professed not to understand, and the question was repeated in Italian.) Oh, you know what I said! Did he not hold you? (He still hesitated.) Did he not hold you, and make his wife bring a candle? Oh no; he did not put his hands on me. Did you not use your hands to get away? The door was small, and there were the husband and wife there, and I believe another person, and I was obliged to open my way and make a passage to get out. And when you did get out you ran? No, I had no need of it; my own door was a few steps off. (Pausing.) Now that I recollect, my own house had two doors. Yes; and one of them was the back door? Yes. And did not the people in the street try to stop you? No, no, no. But you got in at the back door? Yes. Now, did you know Garamoni afterwards said you had been there with his wife? (He hesitated.) Were you ever before the tribunal about it? No. Have you got Madame Garamoni here? (Achilli here smiled with sardonic triumph, and was silent.) Don't stand there grinning at me, but give me an answer! Yes, yes (still smiling); you will have the pleasure of seeing her! Well, have you got Madame Coriboni here? No. Where did you make the acquaintance of Coriboni? At Corfu. When you were there, you had put off your priestly character, had you not, and were travelling as the Cavalier Achilli? It was my name. Yes, but "cavalier," did you make use of that title in your passports (a nod) and on your card? (He hesitates.) Is not that the card you used (handed up to him)? Yes. Now, when did you make the acquaintance of Coriboni? In the summer of 1843. What was he? He was a small merchant; he went about with an operative company; he was then engaged in business about the theatre. Why, he was a chorus singer, was he not? I do not know (hesitating); I have never seen him as such in the theatre—I believe he was so. And the wife, was she so? (Hesitates.) She had no occupation of her own. Where did they live? At Corfu? Yes, while living at Corfu? *Non mi ricordo*. I ask you where they were living when first you made their acquaintance? I cannot recollect. How came you to have their acquaintance? All the Italians who were at Corfu sought my acquaintance, and took pleasure in it. Did you learn what was this woman's character? No. Did you take any trouble to ascertain? No. Was she dressed peculiarly? No. How was she dressed? Very modestly.<sup>4</sup> When you took her into your service, you knew nothing about her character? No. Who recommended the chorus singer to you? He himself came and requested me to engage him. Did you take any trouble to ascertain his character? No; I had known him habitually from sight, and he

<sup>5</sup> The reader will remark the many confirmations all this presents to the evidence of the witnesses for the defence, to which he is requested to refer.

<sup>4</sup> The reader will remember the evidence of several respectable artisans, as to her gross immodesty of dress.



appeared to be a good man. Where had you occasion to see him? About the streets. He appeared a good man from his outward appearance? Yes. So you judge of people in that way? No. And the lady, did she appear from her outward appearance to be a good woman? I had no objection to her; I had nothing to find fault with about her. You mean her appearance I suppose: was she good-looking? Neither the one nor the other. You took them with you to Zante? I did not take them with me. How soon did they come after you? A few weeks after. As soon as you were settled? No; I was three months in Zante before they came. When did you engage them as your servants in Corfu? In the summer of 1843. Did you engage them to come into your service before you left Corfu for Zante? Yes. Then they were to follow you whenever you got a house? No, no; that was not our compact. What was your compact? I took them when I left Corfu. They were in your service at Corfu? Yes. And when you took your house at Zante, you sent for them again to Zante. Yes. You used part of your house for purposes of public worship, for your congregation? Yes. Now, the first time you opened it for that purpose, did Coriboni officiate as clerk? Yes. (Great laughter.) Was he a Catholic? (Achilli laughed, as he replied) Neither a Catholic nor a Protestant, like most of the Italians. Well, then, he might have done for either a Protestant or Catholic church: were you one of that class? No; he had an antipathy to the Roman Catholic Church, but nevertheless he was not a Protestant. Oh, he was in a state of transition, like the chrysalis: not good enough for a parson, but good enough for a clerk! (Achilli laughed, as did every one else.) You were the parson: you had got to a farther stage of transformation, and had become a Protestant! he had not gone so far, and could only be a clerk! (Laughter, in which Achilli joined, but with an air of annoyance.) And the lady, did she officiate? No. She was doorkeeper? No, no. Did she not sit at the door? Oh no, never! Did Coriboni continue to officiate as clerk, or did he cease after the first time? No, no; he continued in that office to the last. Did not Mr. Reynolds speak to you on the impropriety of having these two persons in your service in the chapel? (Achilli paused, then replied) And I remember, as I have said, that after I had reproached him about drunkenness, he spoke with me about the servants. Lord CAMPBELL.—He gave a full explanation before.<sup>u</sup> Sir *A. Cockburn*.—Did he not, on the occasion of the opening of the chapel, remonstrate with you upon the impropriety of those persons being employed? No; on the contrary, he has often used my servants. The question I asked was, whether he did not remonstrate against your having them connected with the church? No, no. Now, you have represented that, on two occasions, you reproved him for his habits of intemperance? Yes; and I will add, that on the second occasion I was requested to do this by his own wife. (Achilli said this with a savage sort of air.) Pray, did you ever see him addicted to intemperance? I have had opportunities of seeing him.<sup>v</sup> Was he an habitual drunkard? Oh, yes. By day and by night. (He

<sup>u</sup> "A full explanation!" A flat contradiction to the evidence of several respectable and unimpeachable witnesses. "A full explanation!" It will be observed that in every instance Lord Campbell interposed to check, discourage, or destroy the effect of questions or observations of the defendant's counsel.

<sup>v</sup> The reader will remark this reply.

nodded assent.) You have seen him drunk? Sometimes. How long had you known him when you remonstrated with him upon this habit? (He hesitated: the question was repeated.) Some months. What has become of Coriboni? He is in the Roman States.<sup>w</sup> Oh, he went back to Catholicism? I believe there are few Catholics there.<sup>x</sup> Oh, then, they are all becoming Protestants? They are negative. (Laughter.) Did you ever say Madame Coriboni was a Magdalen? No; it is a story. Is it a story that Mr. Reynolds remarked to you that he saw two pillows in your bed there? He never saw it; neither he nor any other man have ever seen my bedroom. That is no answer to my question: I ask whether it is untrue that he spoke to you about you having a double bed? It is untrue. Lord CAMPBELL.—That is quite satisfactory.<sup>y</sup> Sir A. Cockburn.—Have you ever walked arm-in-arm with the wife of Coriboni? I should say I should have lost my position if I had been seen so.<sup>z</sup> Were you ever in the streets with her? (Hesitating) I may have met her in the streets, and come home with her.<sup>a</sup> What made you leave Zante? I determined to go to Malta, because I intended to open an Italian church there? Did you ever open it? Yes. In your house? Yes. How long did you officiate there? As long as I continued in the house; a few months afterwards, being employed in the college at Malta, I opened another Italian chapel. Had you subscriptions at Malta? No. Any at Zante? A few friends collected some money among themselves, which lasted a short time. What means of subsistence had you during the time from your leaving the Roman States until you went to Malta? I received some money from my family, and I earned some by literary labours. Now, as to the college at Malta, in reference to Leonini and Saccares, you have said that, before you sent Saccares to Malta, you communicated that to Mr. Hadfield? Yes. Was that by letter? Yes. Was not Saccares gone at that time? When I sent the letter he had not gone. But he was in the act of leaving? Yes. You sent him, you say, to Sicily, on an important mission: was that to distribute Bibles in Sicily? Yes. What number of Bibles? Fifty or sixty. Were they procured from the college at Malta? They were sent out from the committee in London. Did you not afterwards deny that you had sent Saccares away at all? I never denied sending him away;<sup>b</sup> I only denied sending him away to obstruct the further investigation. Did you not know that a day was fixed by Mr. Hadfield for resuming the inquiry? No; I did not know it at all;<sup>c</sup> I thought the investigations

<sup>w</sup> Probably his correspondent, by whom he communicated with Viterbo, through the Roman States—as he had said he did.

<sup>x</sup> Then the supposed state of morals there is no test of the Catholic religion. The fact is, however, that, as he said of the monks, “There are some bad, and some good,” and the bad are everywhere in the majority. But those who do not believe in a religion, nor realize it, are no fair specimens of its results.

<sup>y</sup> Very satisfactory!

<sup>z</sup> And it appears he left the place in a few months.

<sup>a</sup> The reader will remark these answers.

<sup>b</sup> In a publication issued by his friends last year, it is stated that he did not send him away, but he went voluntarily. Let the reader refer to the replies issued by the committee of the Malta College, which will materially assist him in appreciating Achilli.

<sup>c</sup> The *Times* truly says, “This answer caused sensation.”—See Mr. Hadfield’s evidence.

were at an end. Did you not say before that you conceived there was no foundation for the charges, and that after that the principal told you he was charged thoroughly to investigate the matter? Yes. - Was not it after that he told you he was employed for that purpose you sent Saccaces away? Because the investigation was at an end. Did he not tell you he was going to resume it? No, no, no. LORD CAMPBELL. —He says he did not know.<sup>d</sup> Sir *A. Cockburn*.—You came to London, and first resided at Northumberland-street, and engaged Harriet Harris? Yes. Mrs. Achilli came soon after? Yes. Was a person named Castellini employed in the house at the time? Yes. How late did he remain? All day, till late in the evening. You never took any liberties with that young woman? No. Never put your hand upon her? No, no; never touched her. You say the same of Jane Legge,—you never touched her? No, no. Do you know her sister, Mrs. Logan? Yes. Did she send you a message as to her having been served with a subpoena? No; but having some occasion to go to her, I knew of the business. Did you look at the subpoena? No. You did not say she need not attend court, or that the day was gone by? No. You are sure of that? She told me she was forced to accept it, by a man who put it into her hands. Did you give her any advice? No. (Hesitating) I may have said it was a curious thing. I put it to you distinctly: did you not tell her, if any one else came, to shut the door in their face? Not in that sense. Not in that sense! did you tell her, if anybody came again to shut the door in their face? Not about that. She told me that it was with violence this paper had been put into her hands, and I answered that in the houses in England I did not believe that violence could be used. Did you not use these words, “shut the door”? Oh no. Did she say any one had forced themselves into the house? Yes! Did she not speak to you about your being improperly intimate with her sister? No. (Hesitating.) I think not. Think not! why surely it is a thing that would have struck you? She said she had been forced to receive the papers. I am not speaking of the papers, but of the intimacy with her sister, which is a very different thing. (He hesitates.) Did she not speak to you on the subject of your being intimate with her sister? No, never. Did she speak to you on the subject? Never. Did she not say, “You must know best whether you have been intimate with my sister?” She never said these things to me; on the contrary, she said she was sorry the thing about her sister had been mooted at all. I did not ask whether she was sorry or not. But did she not speak to you about your intimacy with her sister? (He hesitates.) Did she not say, “Sir, you must know if it be true”? No. Now about Sarah Wood: you never took any liberty with her? No, no. Did her uncle ever see you on the subject? No. Nor her father? I do not know. Well, now I put the same question as to England as to the other places where you have been: have you ever had connection with any other women besides these? The foreman of the jury rose indignantly, and said, the question was unfair. LORD CAMPBELL.—I think the learned counsel has a right to put the question. Sir *A. Cockburn*.—I think the question is relevant: but I will put a specific case. Did you ever know a girl named Louisa Colchester? *The Attorney General*.—There is no charge about that. Sir *A. Cockburn*.—Is that a reason why I should not put the question! LORD CAMPBELL. —You cannot ask as to a specific case. You should have put it upon

<sup>d</sup> Another kind interposition.

the record. Sir *A. Cockburn*.—My lord, how could we, when we did not know of it at the time? and indeed it has happened since. I submit that his having been guilty of offences similar to those charged in the plea, raises a strong inference as to the probability of those charged having been committed. There are certain offences charged: he denies these upon his own testimony; and of course the question is as to the credit of the witnesses. Am I not entitled, then, to support their credit by showing, out of his own mouth, that he has been guilty of similar offences? Lord CAMPBELL.—You cannot put the question. Sir *A. Cockburn*.—When did you openly renounce the Church of Rome, and become a Protestant? So soon as I arrived at Corfu I began to write letters to the cardinal and the Pope. When did you become convinced of the untruth of the Catholic doctrine as to the mass? As to the real presence. Lord CAMPBELL.—Transubstantiation. I began to have doubts upon the doctrine when I was explaining it as professor of philosophy at Viterbo. Did you continue to celebrate mass long after that? I had doubts. <sup>e</sup> Does this truly describe the state of your mind (reading from his book)? “From this time, in saying mass, I was no longer a Christophagus. I had ceased to believe in what I did. What then in reality was the act I performed? I know not. I was like Luther and many others who no longer believed the mass, who had rejected its doctrines, and learnedly refuted its errors, but still continued to celebrate it.” And again, “With respect to the mass, though I was thoroughly persuaded of its imposture, I still continued to perform it without devotion, yet with a show of earnestness.” Now I ask you, after hearing these passages, whether, when persuaded of the imposture of the mass, you continued to celebrate it? It would have been only in me what happened, with all the reformers who seceded from the Church! Am I to take that as an answer in the affirmative? Did you continue to celebrate the sacrifice of the mass after you had ceased to believe in its reality? I was not perfectly satisfied (hesitating): I had not my heart touched, although I was persuaded. But you say you were perfectly persuaded of the imposture of the mass. Did you, after that, continue to celebrate it? Yes. I had that persuasion in my mind; I had not felt the strength of it in my heart. You were persuaded of its imposture in your mind, but not in your heart! I believed that conversion rests more in the heart than in the mind. <sup>f</sup> Now, as to the convent at Viterbo, was it not made matter of complaint against you that you did not attend choir with regularity? As professor of philosophy I was not obliged to attend choir. I asked whether it was not made matter of observation against you? No, never. <sup>g</sup>

<sup>e</sup> This was at Viterbo. Now, supposing the evidence against Achilli to be true, he was then in mortal sin, and not of a state of grace, which any Catholic theologian would conceive a perfectly satisfactory explanation of these doubts of his, and this want of faith.

<sup>f</sup> Here some of the vulgar portion of the audience gave a cheer, to which Lord Campbell complacently listened. What was cheered,—the practising religious imposture, or the explanation of it as “conversion”?

<sup>g</sup> In his book he says, one of the friars said to him, “Why do you attend choir so seldom?” He gives as his reason, not exemption, but objection, and concludes,—“These are the reasons why I come to choir so seldom.” To attend choir is to recite the “office” of the Breviary (consisting chiefly of the Psalms of David), from which the Morning and Evening Prayer of the Church of England is composed. Achilli speaks sneeringly of reciting the Psalms of David in this office.

Re-examined by the *Attorney General*.—As professor I was exempted from attending choir on week days; on Sundays I attended choir and preached. Is this a true account of your state of mind (reading from his book)? “I had for years received the doctrine of the Bible. I was a Christian in mind, but not in heart. If Christianity were as some suppose, a mere opinion, or belief, it would suffice, in order to become a Christian, to admit the truth of the Scriptures; the absurdity of which is manifest from the consideration that in this case the first Christian could have been no other than the devil. I possessed the understanding of faith, but not faith itself. I could instruct others in its precepts, but was not myself capable of obeying them.”<sup>h</sup> Yes. Now with regard to your leaving Naples, when did you return there from Fransonì? In November.<sup>i</sup>

Dominico Pogge, examined by the *Attorney General*.—I was brought up in the Church of Rome, and was a Dominican father. I am now principal of a Protestant educational establishment at Seacombe, near Liverpool. I was in Viterbo from the beginning of 1831 to June, 1833. I lived in the convent of Gradi when Dr. Achilli was sub-prior. I remember his preaching there. I was afterwards at Rome, and in 1837 he went then to reside at Naples. He was confessor to the princess of Saxony. Dr. Achilli was then universally and very highly esteemed. At Rome I never heard anything against him, but at Viterbo I did, for there he had many enemies. The monks and priests greatly esteemed him, but not the bishop. His appointment to preach the Lent sermons, to visit convents, and to be prior of the convent of St. Pietro the Martyr, at Naples, are great marks of distinction, and could only have been conferred on a man whose character for morality stood high.

Cross-examined by Sir *A. Cockburn*.—You were one of the fathers? Yes. What vows did you take? I took the vow of obedience as a Dominican, but always thought that though not explicitly, implicitly those of “poverty” and “chastity” were included. The book of “Ferrares” is one of authority, but there are things in it which have become obsolete. But this is an edition of 1783, and it states, “*Tria vota, paupertatis, castitatis, et obedientie, sunt essentie religionis ex jure divino*.” Now is that so, that the three vows of poverty, chastity, and obedience are of the essence of the religious life? All that is perfectly true, according to the belief of the Church of Rome. So that it would be an essential part of the vow taken by a Dominican, to obey the injunc-

<sup>h</sup> This was when he was “first laid hold of by the Inquisition.” Now, if the evidence for the defence were true—or even if the inference drawn from his declining to answer the general questions about fornication be correct, he was then in mortal sin, and out of a state of grace, which would perfectly explain this state of mind on the principles of Catholic theology; and the ensuing remarkable words strikingly coincide with the theory, and with what theologians describe as the state of mind succeeding much mortal sin.

<sup>i</sup> This examination closed at half-past four; he had been in the box seven hours.

<sup>j</sup> Hear how one spoke 800 years ago, who had been bred up by monks. Odelarius, councillor of Roger, earl of Shrewsbury, in 1083:—“Who can worthily relate all their vigils, hymns, and psalmody! prayers, alms, and sacrifices! What shall I say of their chastity, their poverty, their obedience! From my tender youth I have been admitted to familiar relations with monks, and have learned thoroughly what were their manners, and I am sure all men are inferior in their lives to monks who live canonically, according to their rule.”—*Orderic Viterb.* lib. v.

tion of chastity? Certainly. Pray when did you leave the Church of Rome? I decline answering that question. What! not answer as to when you left the Church of Rome? Why? I did not come here to give an account of my actions. Why is there anything in your idea derogatory to character in becoming a Protestant? I did not come here to give an account of my actions: it is enough to say that I have had the happiness to leave that Church. Well, when did your happiness begin? Lord CAMPBELL.—He cannot say what had been passing in his own mind, perhaps. Sir *A. Cockburn*.—I am speaking, my lord, of outward acts. When were you received into the Protestant Church? I have not been admitted into the Church of England formally, though I have been in fact. When did you cease to frequent the worship of the Church of Rome,<sup>k</sup> and attend the worship of a Protestant congregation? That is another question: I must beg to repeat, I have not come here to give an account of my actions. Why, what objection can you have to answer such a question? I have one in my own mind; I may be wrong; but you must excuse me. (The manner of the witness made the Court and counsel very merry.) You cannot tell me, then, the first time that you went to a Protestant Church? No. Lord CAMPBELL.—I cannot imagine what objection you have to answer that. I cannot answer questions upon extraneous subjects. Sir *A. Cockburn*.—When did you leave Italy? In 1840. At that time had you seceded? I have it in my own mind. (Much laughter.) Well, so soon as you came to England? I have not come here to answer questions about myself. Well, I won't ask you any more? Thank you. (Great laughter.)

Dominichi Paoli examined by the *Attorney General*.—I was formerly a friar of the order of Serviti, at Viterbo. I lived in that town from the end of 1831 to near the end of 1837. I knew Dr. Achilli there. I have nothing to say against him. I know nothing of any charges against Dr. Achilli during that time.

Cross-examined by Sir *A. Cockburn*.—I am here a year, a free man, having left the Roman Catholic Church. I came originally, engaged by a society to evangelize foreigners during the time of the Great Exhibition. (Much laughter.) What society? It was a society for the evangelization of foreigners. I was at Geneva, and was called to England by that society. When did you leave the Roman Catholic Church? I have been severed from the communion of the Catholic Church for two years: I say so, because I have left Italy two years.\* I left Italy freely, in order to profess freely my religious opinions. I have known Dr. Achilli and treated him as an acquaintance. Between leaving Italy and going to Geneva I went here and there, wherever I was sent by my superior. Who supports you now? I live on the means afforded by Father Gavazzi. I act as his secretary. Is Father

<sup>k</sup> Perhaps he had not ceased at all. It is a doctrine of Catholic theology, that a Catholic can never thoroughly lose the grace of faith imposed by baptism, until he have become reprobate. If this be so, none of these supposed "conversions" can be sincere, in cases where all sense of religion is not lost; and the most remarkable reluctance of this man strikingly confirms this hypothesis; as also does the contemptuous conduct of Achilli in having a Catholic clerk to perform Protestant services at Corfu; and his own language in his book, explaining that he had not faith; as to which, see former note on his cross-examination.—See also evidence of next witness. Of course the argument does not affect those born Protestants.

Gavazzi the man who, being formerly in the Church of Rome, now goes about speaking against it? Yes.

Captain William Hudson Lawrence, R.A., on half-pay, Inspector-General of Police in the Ionian Islands, examined by the *Attorney General*.—In consequence of an application from the solicitor for the prosecution in this case, I sent for a copy of the proceedings between Garamoni and his wife at Corfu. (A witness produced other documents in the same case.) I was employed to find the wife of Garamoni, and she is in this country. I also tried to find out Coriboni and his wife, but could get no information about them. What is the character of the witness Russo, who has been brought over here? I only know it from documents at the police-office.

Mr. Kirkpatrick called and examined by the *Attorney General*.—I was chief justice of the Ionian Islands. I have perused the papers produced by the last witness. It appears that there was a suit for alimony on the part of the wife. Does it appear that witnesses were examined? No. Lord CAMPBELL.—To what length did the suit go? There was a compromise, which is stated in the proceedings; but it came before the court.<sup>m</sup>

Marianna Crisaffi Garamoni<sup>n</sup> called and examined by the *Attorney General*, through an interpreter in Italian.—I am the wife of Garamoni, a tailor, who carried on business at Corfu. I remember Dr. Achilli living next door to me and my mother there. My husband did not reside with us. I remember one night speaking to Dr. Achilli as he was passing. My husband used violence towards me many times, and many accusations have been made against him on that account. I wish I had him here. (Laughter.) My face has been disfigured by him. I said nothing to Dr. Achilli. I had not spoken to him when my husband came up. Dr. Achilli was passing. I wished to call Dr. Achilli because my mother pointed him out to me, and said that probably he being a neighbour had overheard the quarrel between me and a lady friend of my husband. I said to her that I would wait till the evening and ask him if he had heard it. I did so. I got to the window for the purpose of calling him, and as I was going down to speak to him, my husband and Dr. Achilli rushed in together. I wished to call him, that he might be a witness in my favour, but I did not know him. I should like my husband to be here; but he is not—he has run away. (Laughter.) He rushed up stairs on the occasion referred to, and said many things he ought not to say, because the cause was given in my favour. Dr. Achilli was outside the door when my husband pushed him up to it. Dr. Achilli never was in the house before. I know nothing of these calumnies about him. I know not who this

<sup>l</sup> And if they had known anything against him they would have been produced. Lord Campbell did not notice this, though he dropped something to the discredit of Russo.—See his charge.

<sup>m</sup> That is quite clear, and is what the plea alleges. Surely, that part of it ought to have been found for the defendant? Lord Campbell thought so.

<sup>n</sup> Very smartly dressed, but very ugly, with a nose battered in. She wore a veil over her face, and Sir A. Cockburn desired her to raise it, that her countenance might be seen. The prosecutor's counsel was rather pleased at this, as her present repulsive appearance raised a plausible inference of the improbability of the charge. This, however, would depend upon whether her nose were battered before or after the alleged event; and, of course, from the character of Garamoni, it was likely to be inflicted after the event, supposing it to have happened.

Dr. Achilli is. Now I know him, as he has been pointed out to me, but before, I did not know him : the daughter of the landlady where I now reside pointed him out to me. There were proceedings in the court between you and your husband? Yes, and I came out victorious. (Laughter.) Dr. Achilli wished that we should make peace; I had forgiven him before a hundred times, and so I forgave him this also. We lived together some years, but now we are separated again, and have been for more than seven years.

Cross-examined by Sir *A. Cockburn*.<sup>o</sup>—I have been married about sixteen years, and my husband has always led me a miserable life. Did not your quarrels arise from his accusing you of being intimate with other men? Oh, no, no, no; I have always come out with proofs of my innocence. (Laughter.) Did the quarrels arise from his imputing to you improper conduct with other men? It was I who accused him. Why did you bring forward proofs of innocence unless you were accused? I was always beaten, because he had to do with other women. (Laughter.) Was it not because he said you had to do with other men? No, there are many proofs of what I say: two doctors, four lawyers, and many other men. (Much laughter.) What, to prove your innocence? No, no; they will all prove that he is a bad man. (Continued laughter.) When did Achilli come to live near your mother's house? I don't know.<sup>p</sup> How long before this affair? I don't know. Was it one month, or two, or more? I cannot say anything about it. Did you not know who lived next door to you; did you never see Achilli before that evening when you called to him? No. Had you not been waiting up for him? It was for the purpose of calling the gentleman, whom I did not know. Did you not know it was your next door neighbour? My mother told me that evening that this gentleman was my neighbour. Did you see him go out of his house? No; I had not seen him before.<sup>q</sup> I saw him then passing, and I called to him, and I was going down stairs. How did you know that he was out? My mother told me that he was not at home, and I said,—“I will remain all night, if necessary, in order to see him.” Did you say anything to Dr. Achilli besides calling him? I did not even call him, but my intention was to call him for the purpose I have mentioned.<sup>r</sup> (Sensation.) I was still up stairs with a light when they came to the door. Did your husband call you to bring a light! No; but I, wishing to go down and speak to the gentleman, brought it down. Did you hold it up to the gentleman's face? No; but I had it in my hand. Did your husband say, “Worthless woman; I have caught you”? He tormented me, and the whole of that night he went about telling every one that he had caught me with this gentleman.<sup>s</sup> (Laughter.) Two persons passed at the time, and my husband said to them, “See, I have caught my wife with this gentleman.” Did he take hold of Achilli? He came up stairs and insulted me. Did he lay hold of Achilli? He was outside, in the street. That is not an answer. Did not your husband hold Dr. Achilli against the

<sup>o</sup> Let the reader particularly attend to this cross-examination, which completed the evidence on the Garamoni charge.—See the plea.

<sup>p</sup> The reader is requested to compare this evidence with that of Achilli's and the other witnesses, on this charge.

<sup>q</sup> How, then, could she have known him when she saw him return?

<sup>r</sup> Achilli had sworn she came down and was speaking to him, having actually commenced a question.

<sup>s</sup> Here is a complete confirmation of the witnesses for the defence.



wall? Yes; and insulted him in various ways. Did he struggle to get loose? Oh no. How did he get loose? I don't know, for I was up stairs. I did not come down to the door. I could not come. I was at the window. I never came down. I was at the top of the stairs; they lead down to the door. How came the door to be opened at 11 at night? I opened it from above; it is common with the women in Italy to do so by a string passing from a latch up stairs. I had opened the door, and was preparing to come down to speak to him.<sup>4</sup>

Mrs. Achilli called and examined by the *Attorney General*.—I was married at Rome, in 1849. I met my husband in Paris after his escape from the Inquisition. I took a house in Shaftesbury-crescent, and had a servant named Harriet Harris, who was with me three months. I found the kitchen very dirty, and she said it was not a usual thing for English ladies to go there. I said I was not English; "I have not the custom of the English ladies, and I will come when I like." She then gave me notice, but wanted to stay at the end of the month. I, however, would not allow her to stay. Sir *A. Cockburn*.—The girl said all this herself. Witness continued.—Jane Legge was also in my service. I came home one night at 11 o'clock, and found a young man in the back kitchen, and I ordered her to leave next day. She never complained to me of any liberties being taken with her. Sir *A. Cockburn*.—She said so herself. The *Attorney General*.—Was Sarah Wood a Catholic? I think she was; she would not eat meat on Wednesday or Friday.

This concluded the evidence for the prosecution, and it being half-past six o'clock the Court adjourned.

This closed the case in reply.

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## THE FOURTH DAY.

Sir *A. Cockburn* rose to address the Court in reply on the part of Dr. Newman:<sup>5</sup>—

Gentlemen of the Jury,—The course which has been pursued on the part of the prosecution in laying their evidence before you after that for the defence, entitles me to address you on the evidence which has now been adduced; and I shall discharge that duty with as much brevity as possible. Possibly after the length of time the case has occupied, some of you, or even all of you,

<sup>4</sup> The cross-examination was very skilful and successful. In a common case it would have secured the defendant the verdict. This and the few preceding questions were very acute.

<sup>5</sup> Of this splendid speech the *Times* says:—"Sir A. Cockburn addressed the jury for the defendant during a period of four hours, and in a speech which was listened to throughout with breathless attention. We cannot hope to convey more than a very faint idea of the nervous eloquence by which it was characterized. It is very rarely indeed now-a-days that our courts of justice are so thoroughly roused from their habitual state of dull repose; and some difficulty was experienced in suppressing the spontaneous bursts of applause with which the highest efforts of the advocate's forensic powers were received."

may have formed conclusions as to the result at which you ought to arrive. Nevertheless, I am sure, that even if you should have formed any such opinion, you will listen with attention, in the discharge of your duty, to the observations I feel it necessary to make to you in the discharge of mine. Gentlemen, this case has assumed in my mind, and probably in the minds of every one connected with it, a deep and most powerful interest. I have not, and cannot of course be expected to have, any religious sympathy with Dr. Newman; but I have an interest in the case, not only that which the advocate ought always to feel for his client, but an interest that justice shall be done. And I have an additional interest, derived from the peculiar form which the case has now assumed. Gentlemen, the issues have become complicated in this matter. You have no longer the simple question, whether Dr. Newman has been guilty of publishing a libel without facts to sustain the charge he has made, or whether, on the other hand, Dr. Achilli has been wantonly assailed in his character. A new question has now arisen—one of not less painful interest—for it is this:—By whom gross, foul, deliberate perjury has been committed in the evidence which has been adduced! For from that there is no escape! On the one side or the other we have wicked and deliberate falsehood! It is a case which admits of no compromise, on which conflicting testimony cannot be reconciled, or any supposition of mistake, misunderstanding, or misdescription. The women who come forward and state that Dr. Achilli was the man who robbed them of their virtue, cannot be mistaken as to the identity of the man. No woman, whatever the length of time that may pass, forgets the man by whom she was first initiated into the arts and mysteries of vice! And although one might conceive the possibility that a licentious libertine, in the number of his victories, might forget an individual one, still, when time and place, and circumstances, are brought vividly to his recollection, there can be no mistake on his part; and there can be no possibility, that in the generality of his criminal intercourse with women, the particular case should not be present to his mind when he denies its truth! On the one side or the other, there is foul and deliberate perjury. The women who swear that Achilli seduced them from virtue, the mother who swears that she assailed him as the man who had effected the ruin of her child, either they spoke the truth or they wickedly invented the story they came here to tell! On which side lies the truth? That, gentlemen, you have to determine. And in order to determine it rightly, and in determining it to do justice, you must bring to the consideration of the case impartial and dispassionate minds; not assuming, until you have carefully considered and weighed all the circumstances which ought to be taken into account on the one side or the other, that truth is with our party or the opposite.

Now let us pass in review the evidence we have laid before you for the defence; and on the other hand, contrast it with the evi-

dence adduced on the part of the prosecution. If you believe the witnesses of Dr. Newman, the charges against Dr. Achilli, all or most of them, are substantially proved; if you believe Dr. Achilli, these witnesses are perjured, the accusations made against him are unfounded, and Dr. Newman is without defence.<sup>v</sup> On which side lies the truth! Do the witnesses we have called declare the truth, or is Achilli to be believed when he asserts that all that is said is false? I am aware, gentlemen, that every attempt will be made to prejudice the witnesses I have brought before you. Every topic ingenuity can suggest, or prejudice adopt, will be put forward with the consummate skill of my learned friend, and he will have the advantage of following me, so that I can only by anticipation grapple with the observations he is likely to make. He has,—in addition to the advantage he must always have over me,—he has on this occasion the advantage of answering instead of being answered; and he has the still greater advantage of addressing those, who, unless a rigid sense of duty interpose between him and their prejudices and feelings, must offer a congenial auditory to the observations he addresses to them. But nevertheless, gentlemen, I despair not in the strength of what I believe to be the truth! And I will proceed to compare the evidence on both sides, and to point out to you what appear to me strong and cogent grounds for maintaining and believing that the truth is on the side of Dr. Newman on this occasion. With these preliminary observations, I will pass on to the material matters for consideration, and will follow this case through the different chapters of the life of Dr. Achilli, and the charges which attach to the various epochs of his career.

We find that he was educated a Jesuit, that he became a Dominican and a monk, and passed a portion of his life at Viterbo. Thence removing to Rome (where he stays a short time), he goes to Capua, from Capua to Naples, from Naples back to Rome, where he is proceeded against before the Inquisition; then to Corfu, thence to Zante, next to Malta, and lastly to England.<sup>w</sup> Each of these residences forms a chapter in the history of his life; and I will follow him through each.

We begin with Viterbo. We call a witness from Viterbo, who states that he was the occasion of her seduction. Is she a witness to be believed? She comes forward here and tells her story in an apparently artless manner. *She* has no advantages of a Jesuit education, or of a mind trained in the subtleties of casuistry or metaphysical research! She comes and tells a plain tale. She states that she was a servant in a country-house,—that Achilli was there on a visit,—that he induced her to walk out with him,—that

<sup>v</sup> That is, at the trial. The question of law would remain, whether the occasion were not privileged.—See Introduction.

<sup>w</sup> The reader has already remarked how ambulatory he was, which of itself answers the imputations of negligence or connivance levelled against the Church. He was continually removing, or being removed.

he ultimately succeeded,—and in a place of which the sacredness she might have supposed would be her protection. What doubt is cast upon this statement? — who comes to contradict it? It is clear, from Achilli's statement, that he has had every opportunity of investigating the past life of this woman. Since that period in her life many years have elapsed; she has married, — she has lived in Viterbo ever since, — she is settled there. He has communication with Viterbo; he has stated to us that he has carefully watched the movements of his adversaries in that place. He knew that Elena Valente was a witness through whom it was intended to prove the plea, which was filed several months ago. He has had every opportunity of inquiring into the whole course of her career, and ascertaining what has been her character;<sup>x</sup> and yet not a single word has been or can be suggested against her! — not a single imputation can be cast upon her! And even after a very strict and severe cross-examination this woman's character is blameless and unimpeachable, with the exception of that one transaction, in which she was misled (if she speak the truth) by Achilli himself. Well; but then it is to be said she was under the influence of her priest. Her priest told her it would be for the glory of God and the honour of the Church that she should state what had happened; and, therefore, I suppose, from the way in which the question was put, and the effect he seemed to give to it, that is to be insisted upon as proof that this is a story got up by the priests for the purpose of putting down Achilli. I suppose that is to be the case set up against her! and against a good deal of the evidence, personal or documentary, which has been laid before you on our side. You will be told of the acts of the Jesuits, and the tricks of the Catholic priesthood, and of pious frauds for the advancement of the Catholic religion, and of the doctrine that the sacredness of the end sanctifies the means;<sup>y</sup> and other such topics as these will be addressed to you. But it is a two-edged sword, and cuts two ways! You will be told of Italian perfidy, and how little Italian witnesses can be relied upon.<sup>z</sup> Again, I say, it is a two-edged sword! — be careful how you use it!

For what is Achilli! on whose oath these witnesses are to be convicted of perjury? Is *he* not an Italian? Was *he* not educated by Jesuits? Was *he* not initiated into all the craft and artifice which is ascribed to that well-known fraternity?<sup>a</sup> (whether rightly or

<sup>x</sup> And such efforts had been made in other cases, as that of Russo, though with scarcely better success. The strength of this argument is evident; yet Lord Campbell never noticed it!

<sup>y</sup> Condemned by all Catholic theologians (as every Catholic well knows), but acted upon by the promoters of the Reformation and Revolution. On no other principle could Cranmer and his associates have traitorously conspired to set aside the lawful heir to the crown, or Burnet and his colleagues have traitorously thrust out their sovereign from his throne.

<sup>z</sup> This coarse prejudice surely should now be destroyed, after the awful exhibitions of perjury this country has witnessed since the new Act came into operation, for examining the parties to a suit.

<sup>a</sup> Alas! ill known to those who calumniate them!

wrongly I stop not to inquire.<sup>b</sup>) Is *he* not a subtle disputant, and an ingenious casuist?—brought up amidst Italian priests and monks, himself an Italian, a priest, and a monk? You saw him in the witness-box! Gentlemen, I would not be guilty of the injustice of judging a man's heart by the externals of his physiognomy; but I cannot help thinking that if, instead of appearing in the garb of a Protestant preacher, he had appeared in the monk's cowl, it would have struck many of us that, having our minds imbued with notions we are apt to entertain respecting the characteristics of that portion of the Catholic clergy, that the man and his habit were by no means ill-suited!<sup>c</sup> And I say, gentlemen, if you are going to hear it urged against the testimony of the witnesses I have adduced, that they are Italians, and under the influence of priests and monks, I tell you that the man who is brought to meet them is an Italian, a Jesuit, a priest, and a monk!<sup>d</sup> and I claim for my simple peasants—unless circumstances, intrinsic or extrinsic, denote that they are disentitled to the credit—I claim for them, at least, as much consideration at the hands of an English jury as the Italian priest who is produced against them can secure!

Well; but is there no other circumstance to be taken into consideration in testing the value of the evidence? There is. It is the interest which the parties have, and under which they speak in the witness-box. How stand the parties here? What interest can these women have to come here and proclaim their own disgrace, that a confessor, or priest, has told them to go forward and speak the truth for the glory of God and the honour of his Church? Gentlemen, do you suppose that Dr. Newman has been suborning testimony, and inducing witnesses to come forward here and lay perjury upon their souls in order to protect himself against this information?<sup>e</sup> Gentlemen, we may differ from Dr. Newman—we all of us probably do; we may have regretted to see him falling off from the faith in which he had been bred,—but it has never occurred to any living soul to impute to him anything which can affect his morality, his honour, or his integrity!

<sup>b</sup> “*Jesuitæ vero qui se maxime nobis opponunt aut necundi, aut si hoc commode fieri non potest, ejiciendi aut certe mendaciis et calumniis, opprimendi sunt.*”—*Calvin. apud Becan. t. i. Opusc. xvii. Aphoris. 15: de modo propagandi Calvinismum.* Pascal, their great calumniator, when asked if in reality he were sure all he had written against them was just, made the excuse of an unscrupulous counsel,—“that it was those who furnished him with information to look to that; not for him, who only arranged the materials.”—*Mores Catholicici, lib. vi. c. 8.*

<sup>c</sup> This was more cruel to the monks than to Achilli.

<sup>d</sup> What a disgrace to the age so “liberal and enlightened,” that such a curious species of argument should be resorted to by so acute an advocate, as the only way of neutralizing so coarse a prejudice!

<sup>e</sup> This atrocious insinuation had been originally suggested from the judgment-seat; and now, not only was the Attorney General silent, instead of indignantly disclaiming it, but the Lord Chief Justice of England sat still and listened to its repetition with serenity and complacency.

Will it be said that these persons have been brought for the purpose? No one surely can suggest it? The obvious answer is, that if the principle upon which this defence has been conducted, was to suborn testimony, we might have accumulated case upon case against Achilli. But is there no such interest on the other side? Ask yourselves this question before you determine on this contest of oaths! Consider the position in which Achilli stands, and the circumstances under which he is brought into the witness-box, Everything he has in the world is at stake! Your sympathies will be appealed to on that ground—but observe, on the other hand, what an important circumstance that is to take into consideration, when you come to consider the evidence he has given, and the amount of credit to which it is entitled. One thing is perfectly clear, whether by his own act, or by the act of the authorities of the Catholic Church, he has quitted or has been driven from that Church for ever.<sup>f</sup> All hope of preferment, honour, or emolument is in that quarter cut off for ever; and his hope of maintenance and existence in the country to which he has transferred himself depends upon the position he has assumed as a Protestant preacher: adopted by a particular body, anxious for the propagation of Protestantism, and for proselytism among the members of the Catholic Church. He has been adopted by them as a great and shining light in this work of conversion; and to his utility in that respect, his character is absolutely essential—if that fails, there is an end to Dr. Achilli, and an end to all those pleasant prospects which no doubt stand out for him in the future. Observe, then, the deep interest he has in denying these charges. What interest, which the witnesses who have been called can have, is to be compared with his? None that can possibly be suggested! Surely this is a circumstance which demands your serious consideration before you come to the conclusion that the witnesses who swear to these facts are perjured!

Again,—when we are comparing the evidence of two witnesses diametrically opposed to each other, it becomes important to look at any of the surrounding circumstances which may show on which side the balance should incline. And there was a circumstance connected with Elena Valente, which I think tends to show somewhat the unscrupulous character of the man whose answer is in question. Achilli is prepared to have her placed before him? He is asked if he had ever seen her before? “Oh, no, no!” Well, she has stated, that in a certain year, he was on a visit at a house where she was living as servant—the house of a lady who was a Gentili; and he is asked: were you ever in the house of a Gentili? “Oh, dear no! it is impossible—there are only two Gentili families in Viterbo, and there are two brothers heads of families: besides, I always passed the month’s vacation

<sup>f</sup> Not necessarily so. The very prelates and priests he has most cruelly calumniated, would be the first to hail his reconciliation and return.

in the houses of three friends." (Whom he mentions, and one of whom he says was a Christopholi.) That seemed conclusive. However, when I come to cross-examine him, it comes out that though it is true he went to the house of a Christopholi, the lady was a widow, and had been a Gentili. Christopholi, her husband, was dead, leaving her and a young son, and she had been a Gentili! And this lady had a country-house in the neighbourhood of Viterbo, as Elena Valente described it. That lady was in the habit of receiving Achilli as a visitor, and she received him (with her brother-in-law) that very month in which criminal relations are represented to have subsisted between him and Elena Valente! And if it be asked how she came to call the lady by the name of Gentili, the answer is, that the Italian ladies do not always drop their first name when they marry; and we have proof of it in this very trial,—for instance, the witness Giustini is better known by her maiden name of Valente; so Maria Principe, though married, continues to be called by that name; and my learned friend himself calls Madame Garamoni by her maiden name of Crisaffi, and she answers to that name; just so was it with Madame Gentili,—her husband Christopholi died soon after marriage, and she goes on being called by the name of Gentili, some times by one name and sometimes by another. Now I ask any one who has a mind unprejudiced, and an intellect unclouded, whether he can doubt that when Achilli stated there was no Gentili whom he had visited, and it was impossible, because the name of the lady was Christopholi, he did not know who was alluded to, and that she was a Gentili? That shows you gentlemen, the casuistry of the man you have to deal with; and it is calculated to throw a very considerable light on the whole of the case. I ask you whether, under these circumstances, you can hesitate to give your credit to the witness Valente instead of to Achilli? That is, then, the case which happened at Viterbo.

Gentlemen, this brings me to the next chapter, which is Capua; but as that case rests on documentary evidence, I pass it over for the moment, preferring first to follow the oral evidence of living witnesses; and this takes me to Naples. There occurred the case of Maria Principe. According to her account, Achilli took advantage of her going to the church of St. Pietro Martyro, at Naples, for the purpose of paying her contribution to an association that had been formed in honour of the Virgin Mary. She proved afterwards with child, and tells her father and mother; and her father died a year or two afterwards, his death being accelerated, according to her account, by the grief occasioned by his daughter's shame. But that, perhaps, is a delusion!<sup>s</sup> An Italian and a Catholic, I suppose, has not the common feelings of humanity! and it is not to be believed that he

<sup>s</sup> The advocate's voice here changed, by one of those sudden inflections which at once mark and excite deep feeling, and the next sentence produced thrilling effect.

can have grieved in sorrow and anguish over the ruin of his daughter! all that of course is a delusion! However, gentlemen, according to her evidence the father and mother, when they found out who it was, although to address a monk in a procession might have been in the Neapolitan States an offence, called him aside and addressed him in the language of remonstrance; and it is with difficulty that he breaks away from their importunity! But all that is a delusion! When the mother and daughter are introduced into court Achilli looks with profound contempt upon both, and says he has never seen their faces!<sup>b</sup> It is all falsehood! But there are corroborating circumstances! It is clear that there was a society such as the girl represents; and a paper is produced, such as was given to every person who was a member of the society. The paper produced has actually Achilli's writing upon it! And he admitted that he often made entries in the books containing the account of moneys received. So far there is confirmatory proof<sup>i</sup> which cannot be got over. Possibly, if the paper had not been produced, we should have heard Achilli declare that he had nothing to do with such an association! that it was all imagination or invention! So far, then, she was clearly speaking truth. As to the rest of her story, why should you presume, gentlemen, that these two witnesses are perjured? If the object has been to produce perjured testimony, why are we reduced to the necessity of proving some of these cases by documentary evidence, upon which we know that the whole thunder of the Attorney General's eloquence will be discharged—the judgment which comes from the Vatican? Observe that these two witnesses are persons upon whose character not the slightest imputation is cast! though inquiries have no doubt been made with respect to them; and if Achilli cannot go to Rome there is nothing to prevent his agents from going to any place in Italy; the names of the witnesses were given long ago, and he had no difficulty in ascertaining whether they were respectable and reputable, or persons whose conduct was open to reprehension, or whose character was tainted by any crime or offence. Yet all we have is the simple denial of Achilli! who declares that he has never seen them!

Now observe, gentlemen, the rest of the evidence! It seems that the parents, in their resentment, did not spare him even when they met him in the pomp of a Catholic procession; and they told on every occasion this story of the ruin of their daughter. The matter became serious,—such a charge against a monk, and a priest, and the prior of a convent! This was a matter too serious to be hushed up. Some one goes before the police; it matters not who, whether Achilli or his friends; the material fact is that all this charge is brought forward against him. The commissary of police investigates the matter.

<sup>b</sup> If this were untrue, of course the other general denials could not be relied upon; and it is, therefore, of the utmost importance to consider the probabilities as to this case.

<sup>i</sup> Which Lord Campbell did not advert to.



If you believe Achilli, he was profoundly indifferent to the whole matter! It was only the anxiety of his friends, who induced him to interfere at all in it! He, like the Roman, wrapped himself in his virtue (or his monk's gown), and treated it all with supreme contempt! Do you believe it? Do you believe that he never took the trouble to inquire who the persons were who preferred this charge against him! Can you believe it possible? Or, if you believe it possible, does it not argue an utter insensibility to such an imputation? That he should know himself charged with such a shocking crime, and not rush at once to the police to know who made the charge! It was only (as he says) his friends who chose to come forward and have the matter inquired into. Gentlemen, if it be true, it argues either an utter insensibility to such accusations, or it leads to the inference that he durst not meet them face to face in the place where all parties were known, and where the result of the inquiry, if pursued actively by him, might have been to make manifest the truth of the charge, to pull him down from his place of honour and dignity, and consign him to condign chastisement! But at all events, mark this,—the matter was investigated! In Naples the Church stands high—the priesthood is exalted: a charge against a priest is a most serious matter! There would be no indisposition on the part of the authorities to protect a priest against what appeared unfounded calumnies. On the contrary, the leaning would be the other way. The disposition would be to silence calumniators, who dared to ascribe to him a crime so monstrous and so foul! But what does the commissary of police? He has the parties before him; he tells the parents to send the girl to him; he hears her artless tale; he believes her, and sends them away, leaving the case to take its course; and the priest remains silent! The parents continue their complaints: he treats it with indifference, and goes elsewhere, leaving them without reparation; and when they come forward to tell their tale, the victim of his lust is to be the victim of his falsehood, and to the shame which he has already affixed upon their brow is to be added the brand and infamy of perjury!<sup>j</sup> Pause, gentlemen, whatever may be your feelings in the case, and take care that you do justice between these parties! This is an old matter! It is no invention! It is clear from Achilli's own account that this charge was preferred against him by these very people at Naples. Does not this of itself show there was a ground for the charge; and that is not to be dismissed on the simple denial of Achilli,—his unsustained denial; and that all these persons have stated is not to be disposed of as a charge preferred by perjured witnesses, who have invented and fabricated their story!<sup>k</sup>

Gentlemen, this brings me to the case of Garamoni at Corfu.

<sup>j</sup> No one who heard will ever forget the terrific effect of this powerful passage.

<sup>k</sup> Lord Campbell put this to the jury (the only point against Achilli which he did put), but they of course disregarded it, and found this charge also false!!

We have accused Achilli of improper intimacy with Garamoni's wife, and with having figured in some court of justice in some suit between them. Now, upon the documents produced before you, it clearly appears that Garamoni was before the civil tribunal of Corfu on a petition for alimony, which he refused to pay on account of the alleged unfaithfulness of his wife with Achilli; to which he alleged in answer, that the matter came before the tribunal, and was afterwards compromised on the terms of her abandoning her claim to alimony. This satisfies one part of the plea, alleging that the charge came before the court.<sup>1</sup> Then as to the truth of the charge, we have the evidence of two or three witnesses: that Garamoni believed his wife was playing him false (she gives of course the version which might be expected from her,—that she suspected him of unfaithfulness; but when a husband beats the wife, it appears more probable that he suspected her), and this led him to observe the house. These two witnesses state (and they are as to this in a great degree confirmed by the wife), that one evening, finding his wife was watching at the window, he and Patrini see Achilli go in; and then he calls Russo, and opens the door, where he finds, as the witnesses allege, Dr. Achilli. A struggle ensues; Achilli escapes—he gets away, and goes in (as he himself says) at the back door of his house! It is to be said that Russo is not to be believed because he has been imprisoned on some trivial charge when he was a child! But there appears nothing against him that should disentitle him to credit. And he is confirmed by other witnesses. What say Achilli and the wife of Garamoni? He gives his own evidence, and calls her to assist him. It would have been wiser for him to have left her alone! for out of their own mouths will I convict them of irreconcilable discrepancy and palpable falsehood! Achilli states, "I lived next door. One evening, between eleven and twelve, she was at the door, and calls me to her, and says she had some question to put to me. I went across; and she had just begun it, so that I heard the first words, 'Have you heard ——?'" Had Achilli stopped there, one might perhaps have believed him. But he produces the wife of Garamoni; and she says, "I was waiting at the window to see him. My mother had told me to wait and ask him if he had heard cries." (What his hearing cries could have had to do with any interest of theirs, I do not quite see, especially as he could not have known from whom they proceeded, or from what cause). "My mother had gone to bed." (Strange that the mother of a young woman, with a jealous husband, separated from him, should go to bed, and leave her, between eleven and twelve at night, to see a man whom she says she had never seen before, just to ask him about some noise! Surely, if she were so interested in the solution of that question, she might have sat up

<sup>1</sup> Lord Campbell himself said this was proved, yet the jury found it not proved "to their satisfaction!"

a little longer, or postponed putting it till next morning! Strange and improbable story to any one who is not resolved to believe every syllable Achilli chooses to swear to! and you will see she contradicts him. And now comes this striking fact,—that whereas Achilli stated she came down and spoke to him, she says she never came down stairs at all! You see she is anxious not to be placed too near him, from fear of suspicion of anything improper between them; but Achilli, who does not see that so strongly as she does, says “she came down and was speaking to me!” And then he says, the “husband came and pushed me into the house!” Obsequious husband! What an improbable story is this! What an insult to our understanding, to ask us to believe it! Gentlemen, we are not Italians, but we are Englishmen: we are not so subtle as Dr. Achilli, but we possess plain reasoning faculties, which lead us to reject such stories so utterly irreconcilable. We have here a direct and deliberate contradiction, in a matter most material, and in which the witnesses cannot be mistaken. Gentlemen, they learnt their lesson, but they did not learn it well! On one point they agreed, that they were both to say that he was called over in order that some question might be put to him; but they forgot to agree as to whether she came down and spoke to him or not. He says she did; she says she did not. Nor is this all. It is part of our case that Garamoni seized Achilli; he says Garamoni never seized him: the wife says he did seize him, and held him against the wall! There is another contradiction. Is such testimony entitled to the slightest credit? And on such contradictory testimony are you to reject the evidence of two witnesses who agree, and who are confirmed by the very testimony thus adduced in opposition?

Gentlemen, the next case is that of the wife of Coriboni, at Zante; and if here the balance of evidence does not incline decisively in favour of the defendant, I understand not the nature of testimony at all! Achilli could not have been unaware that there had been serious imputations made upon his moral conduct. He admits that accusations had been made against him,—unfortunate man! He has gone through a long career of innocence and virtue; but, somehow or other, it has happened that “thousands of charges” have been (as he admitted) made against his character. Surely, it behoved such a man to walk circumspectly! But what does he do? Before he leaves Corfu, he engages these two persons,—Coriboni and his wife; and who were they? Coriboni was a chorus singer: he had a fair wife. To be sure, Achilli says she was neither well-favoured nor ill-favoured; but, however, she sought, it seems, to make up for any deficiencies in the perfection of her charms by a liberal disclosure of such as she possessed. According to the evidence of several witnesses, she was a woman of loose character. Well, he takes these persons into his service, without the slightest inquiry as to who or what they are. He says he saw Coriboni in the streets, and heard he was a chorus

singer. He waits not to inquire into their character: all Corfu would have given it to him. She was not exactly the person for a minister of religion to have about him, but he engages them both. He goes to Zante. They come there after him, and are taken into his service; and he having opened a chapel, Coriboni, to his great astonishment, finds himself converted, though a Catholic, into a Protestant clerk. (Laughter.) In Shakspeare's language, he had, in the exercise of his vocation, played in his time many parts,—sometimes a peasant, sometimes a soldier, sometimes a prince, sometimes a priest of Isis,—but now he was a Protestant clerk. (Great laughter.) He had not yet gone beyond the chrysalis stage, which had produced the butterfly Achilli; he was still in the grub condition (renewed laughter), looking to the bread and cheese; ready to exercise this or any other vocation that might be suggested to him. He had no objection to be a Protestant clerk, although he had never thought of the Protestant religion. I dare say it never occurred to his mind but as a heresy; but the moment he is told by Achilli to go through certain ceremonies, and make certain responses, he is perfectly ready, for a reward,—anything for an honest livelihood (like Achilli himself, in that respect),—and accordingly he becomes the Protestant clerk, as Achilli had become the Protestant parson. Gentlemen, talk to me of the distinction which Achilli spoke about, between “the religion of the heart and of the mind,” as if such expressions were applicable to a case like this! Gentlemen, there is a religion of the understanding, and there is a religion of the heart; and the true religion is that which combines both—when the faith which is found in the recesses of a man's heart is in unison with the reason and the intelligence with which God has endowed us! But there is a religion which is detestable, and it is the religion of the breeches pocket; and that, gentlemen, is the religion which too many, if they do not profess, practice; and when a man is expelled from the Catholic Church, he is ready enough to join the Protestant Church, or *vice versâ*;<sup>m</sup> and he is caught up by people who are foolish enough to believe that every man who professes to be a convert is so in truth, from conscience and conviction; though, when his motives come to be ascertained, they are found to be of the most sordid and interested character of which human nature is capable. Take the case of Achilli. He professes to have abjured the errors of Rome,

<sup>m</sup> Has there ever been a convert from the Catholic Church as to whom it cannot be shown that he was stained by immorality, or influenced by worldly self-interest? It certainly cannot be said of the first Reformers; nor could the evidence in this case support a contrary theory as to modern “conversions.” It is to be observed that a Catholic has to give up a faith—a Protestant to get one. Of course this reasoning does not apply to those who are born and bred Protestants, whose sincerity is unquestionable. But, on the other hand, from the Reformation downwards, have not converts to Catholicism been, as a body, men of good moral character, and acting against their earthly interest? The argument is not suggested offensively, but as really worthy of serious consideration.

and to have become a convert to the Protestant Church. He establishes a Protestant chapel, and takes a Catholic chorus singer for a clerk, making him participate in the public worship of the Church of England. Does not this show the real feelings and motives of Achilli? Was it not a wanton desecration of all that is sacred in religion? Well, he is remonstrated with by Mr. Reynolds, who, when he first enters the chapel, is astounded to see Coriboni acting as clerk, and his wife as doorkeeper. He says, "What are you doing? You have a woman here of bad character, unfit for any service in a Protestant place of worship!" What does Achilli reply? He says himself that his answer was, that it was indifferent to him, so long as they behaved well in his house. A large charity, truly, to consider this a sufficient reason for placing them in a Protestant chapel, to cause scandal to the virtuous! Such, however, was Achilli's view of the subject. According to Mr. Reynolds, the result of his remonstrance was, that the Coribonis were removed from the chapel, and never acted there again. Achilli, on the contrary, says that there was no remonstrance as to the chapel, and that they acted there throughout. That is a flat contradiction: it is for you to say whom you believe. Mr. Reynolds goes on to speak to familiarities between Achilli and the woman Coriboni; and the same things were witnessed by the young lady who was likewise called. Mr. Reynolds says, further, that he remonstrated with Achilli about them. He says he never so remonstrated: but he says that, after he had accused Mr. Reynolds of drunkenness, he spoke to him about the employment of these persons. Now, gentlemen, there can be no doubt of this, that Achilli has a strong interest in making out his case. Mr. Reynolds does not, on the other hand, appear to have any interest to induce him to swear falsely. Has he invented these things? Are they unlikely to have happened? Achilli denies it all! He says, also, it was impossible. Why? "Because my house commanded his—not his mine!" Well, gentlemen, you have here oath against oath; and remember the oath of Achilli is the oath of a man whose *all* is staked upon the issue! And how Mr. Reynolds is to be considered as having fabricated falsehoods is to me incomprehensible. The Attorney General produced a letter, however, to disparage his testimony;—a foolish letter to a gentleman, whom Mr. Reynolds refers to as capable of confirming his statements, and who, it appears, was unwilling to come up from Plymouth to London unless his full expenses were paid, being an officer on half-pay, with a large family. Something had passed on the subject between them, and Mr. Reynolds writes to assure him that he need have no fear on that score, for that he would be dealt with "liberally." And that, it is to be pretended, was purchasing testimony! Why, could he have conceived that an officer in her Majesty's service was capable of being bribed, by the oen-

sideration of having his expenses paid on a liberal scale, to come and give false testimony? The proposition is monstrous! — unless, indeed, the fact that this gentleman was mean enough to hand over a letter which had been written to him confidentially by a friend, may lead to the conclusion that this would have been only a true estimate of his character! Is this the ground on which we are to come to the conclusion that all which Mr. Reynolds has stated was false! Gentlemen, it shows the very reverse. That letter which my learned friend produces refers to the transaction as to which Mr. Reynolds testified. It says, “You remember the matter we were talking about?” That shows there was such a transaction! Besides this, is there no other evidence about it free from all imputation? Yes, there is the evidence of the young lady, the nursery-governess. What is to impeach her testimony? she is no longer in the family of Mr. Reynolds; she resides elsewhere; she is not an Italian; she is not a Catholic; she is a most respectable person—a Protestant. She has no interest in supporting Dr. Newman, of whom probably she never heard! She says she saw the Coribonis at the chapel the first time, and that they never officiated there again; and she says she saw what passed between Achilli and the woman. If these things did not take place, then not only is Mr. Reynolds perjured, but this young lady too! And what motive can she have to come here and lay perjury upon her soul for the sake of Dr. Newman, whom she has perhaps never heard of, and for whose religious persuasion she can have no sympathy? It is to be said, “The windows were open, and is it supposable that a man officiating, as minister of religion, having a character to maintain, would be so mad as to expose his conduct thus at an open window to public view?” Yes, but if you believe Achilli, he believed that they could not command a view of his window. That puts an end to the whole argument.<sup>n</sup> Is that young woman to be deemed unworthy of credit because it suits the purpose of Achilli to say that she is perjured? What right has any one to ascribe perjury to her? She has no interest, — Achilli has. Who is it who is on his trial? The legal defendant is Dr. Newman; but he is forgotten, — the real defendant is Achilli, and he has all the advantage of the sympathy which a party accused generally engages. And he has the further advantage of swearing in his own favour. According to the law of England, if he had been the party legally accused in the proceeding, he could not have been examined. Whether that is a wise state of the law is another thing; and whether, in every case, civil or criminal, a man should not be ready to state, on oath, all he has to state, is deserving of consideration. But why has the law been established on its present principle? Because the party accused of crime will, in the position in which he

<sup>n</sup> Will it be believed that Lord Campbell actually put this argument for the prosecutor to the jury, with his own approval, and suppressed the answer afforded by Achilli's own oath!

is placed, hardly be able to resist the overwhelming temptation to save himself from the consequences of his offence even at the expense of the false evidence which may be necessary to his exculpation.

LORD CAMPBELL.—It must also be considered whether, if he were permitted to give evidence in his own favour, he must not likewise give evidence against himself.<sup>o</sup>

SIR A. COCKBURN.—The principle, however, on which the law at present proceeds is well worthy of serious consideration, as an important ingredient in the question. And certainly to that principle this case is an exception; for Achilli swears in his own defence,—his character, his all is at stake; and one would scarcely be supposed, to put that under the influence of motives so overwhelming, he could give evidence such as he might not give in a cause affecting another. On the other hand, I repeat, there is nothing in the shape of interest or undue influence to induce this young lady to come forward; and I ask you, are you justified in disbelieving her when you can only do so on the supposition that she has committed perjury! Surely Achilli has an interest infinitely stronger than any which can be ascribed to Mr. Reynolds? and this we have by confirmatory testimony. It has pleased Achilli to ascribe his evidence to resentment at having been remonstrated with for habitual drunkenness. Mr. Reynolds denies that. And is it to be supposed that an habitual drunkard would have been continued for twenty-five years in the service of the British Government as collector of customs and inspector of health? Do you imagine that it would not have been discovered, and that he would not have been disgraced? That, I think, is a tolerable answer to the charge thrown out against him by Achilli. And you will observe that in every instance wherever he has an accuser to deal with, he brings a charge against him. At Viterbo there is somebody connected with the convent who is dissatisfied with his conduct; and he is handed down to the world as a man of villanous character, capable of any atrocity. The superior of his order finds fault with him, and threatens to bring him to trial for alleged offences; and he is said in this book to have “died loaded with execrations!” A cardinal, also, who thought the proceedings of Achilli ought to be inquired into, is said to have been living only that he may add to his crimes. Such is his habitual course; and so

<sup>o</sup> Why not? The writer believes such originally to have been the law of this country, and that the early criminal trials show it to have been so. In such a case as the present, surely common sense would indicate that, if a man be allowed to come and swear in his own defence, against the evidence adduced by the defendant—the latter ought to have been able to call him to examine him before he knew what the exact amount of that evidence would be, that it might be seen how much he would admit and how much deny. And it is believed that this, as it is even now the usual, was originally the regular course.—See remarks on this point in the Introduction; and see Sir A. Cockburn’s opening speech.

the moment Mr. Reynolds appears against him he is set down as an habitual drunkard! Well; so much for the case at Zante.

Next we come to Malta. There he is in the college where there was a department for priests who had seceded from the Church of Rome, and it turned out that these converts were not the best of men. It appears that the conduct of two of them, Leonini and Saccares, was such as brought scandal on the college. Inquiry was made, and charges brought forward which at first were not substantiated. Certain communications are made to the committee, and they order a more strict and searching investigation to take place, to be conducted partly by Achilli himself. The day is fixed for resuming the inquiry, when just before it is going to commence, Achilli sends away the principal party, Saccares, whereby the whole inquiry becomes a nullity. This is a suspicious circumstance, the more so, since the committee having taken it into consideration, dismissed Achilli from the college. He says in answer, "I did not believe the truth of the charges." What answer is that to the order of his superiors to institute a new inquiry? Then he says, he did not know that there was to be another inquiry, and thought the inquiry had concluded! But here he is contradicted by every witness who is called from the committee or the college,—by Lord Shaftesbury, by Mr. Watts, by Mr. Hadfield, and by Dr. Bonavia; all agreed that the inquiry was to be resumed by Achilli himself! Then again, he says,—"I gave Mr. Hadfield notice, that I was going to send Saccares away, 'so he could have stopped him.'" Is that so? He "gave notice," in a letter dated the very day Saccares went, and stating "he goes immediately; he no longer belongs to the college;" so that Mr. Hadfield's jurisdiction over him had already ceased, as he had no authority over him except as a member of the college. Remember, Achilli had been the intimate friend of these two priests, Leonini and Saccares, and had lived in the same house,<sup>p</sup> and if there had been immorality, of course the blame would have attached to him. It was no doubt very convenient to send Saccares away. Had he been examined, who knows what might have come out? Who knows, if ladies visited the convent, whom they visited? It would never do to let all this out; so all in a sudden there arises an urgent necessity for sending bibles into Sicily, so Saccares was sent away as fast as possible. Gentlemen, this is not a view taken for the first occasion in this case. You have heard it from Lord Shaftesbury and other witnesses, who are not Italians nor Catholics, but English Protestants, who can have had no feeling against Achilli; on the contrary, he was a great convert from Catholicism, he was a great gain from Rome. Nevertheless, they see that it will not do to maintain Achilli any longer of the college, and they dismissed him, and now he comes forward

<sup>p</sup> It is hardly necessary, to those who are acquainted with the character of Achilli's book, to say, that these were ecclesiastics venerable for piety and learning.



and says, as usual, that this is all false, and that he has been treated in the most unjust way! And there is another thing in this part of the case. What say you, gentlemen, to the conversation with Dr. Bonavia? Is he not to be believed? No! For he comes forward against Achilli. Everything alleged against him is to be disbelieved! Yet he is a Protestant; he is neither a Catholic nor a Tractarian, but a zealous Protestant. What interest has he in misrepresenting the matter? Why is he to be disbelieved? Is this conversation imaginary? If not, and it be true, then when there was a question of flagrant immorality—a charge of introducing women for improper purposes—would you expect to hear the man who has been denouncing the alleged immoralities of Catholic priests, and who represents himself to have been actuated by his abhorrence for them in leaving the Catholic Church—would you expect to find him saying to a person remonstrating about similar practices in a Protestant college, “Oh, you are too scrupulous!”

Now we come to the last stage of the history—London. In the meantime he had married, and surely where he had induced a young lady to associate her happiness with his, he becomes bound to her virtuously. But, at the first house he takes, he solicits the chastity of a girl in his service! If that be true, what a light does it throw back on the early history of his life! If a man who has already entered into the holy state of matrimony be so forgetful of his duty, that he is unfaithful to his wife, we can judge of the credit to be given to him when contradicting similar charges of the same character. And is this witness a Catholic, or an Italian? Is she come here to perjure herself? Has Dr. Newman brought her? If so, why should she not have stated *all* which the other woman swore to? And how is her testimony to be destroyed? Why, it is said that Mrs. Achilli accused her of being dirty! But Mrs. Achilli gave her a character, and is it to be supposed that after finding another service she should come here to swear falsely against her former mistress? Was that all which Mrs. Achilli was called here for? No gentlemen! She was called here to excite your sympathy! There you see a little of the art with which the case has been conducted. She was not called here to state things which the witnesses had already admitted. She was called to excite your sympathy, and for no other purpose! I pass on to the next witness,—Jane Legge. She, I admit, was of a bad character, but she showed some honesty and conscience; and declined to swear what she did not know to be true. Now her sister, Mrs. Logan, is a respectable person; and she has no interest in the matter, and is indeed a reluctant witness. It appears that when subpoenaed she sent for Achilli, who says, “Nonsense, you need not attend; shut the door in their faces!” Then a conversation ensues as to how they had discovered that her sister had anything to say against Achilli; and Mrs. Logan says Mrs. Castellini must have told them; at which she is very angry; and then as the conversation goes on,

she says, "You must know best what has passed between you and Jane." He maintains a discreet silence! Then we come to Sarah Wood; is *she* perjured? She tells her simple story. She came from the House of Mercy, where unfortunate women who have fallen into guilt and shame are restored to virtue and society. She is recommended from that place, which is in itself strong evidence of her being reformed in character; and her very going there shows that the poor girl (still very young) was resolved to try and live virtuously in future. After what happened at Achilli's her health fell off, and she had to leave: her father is sent for, and takes her away. Why? Who can doubt it! What should detract from the truthfulness of her story? Is she too perjured? Yes. Good God! am I in England?—am I in a court of justice? Shall I hear it said—that because it is surmised that she is a Catholic—that she has a book with the cross upon it!—that therefore she is to be presumed capable of conspiracy and perjury! Is that too not to be believed? How monstrous! It is possible there may have been a mixture of Catholicism at the House of Mercy. But you, gentlemen, will not, I trust, administer justice upon such a principle! You will not permit your minds to be clouded by prejudice, and to be perverted by this fanaticism and bigotry (for so it is)! I trust these miserable feelings will not be allowed to interfere. I hope you will be enabled to hold the scales of justice fairly even, though your hands may be shaken by the excitement of religious passion, and the warmth of religious zeal! These will be appealed to, I doubt not; but I appeal to your sense of justice, to your consciences as men and as Christians, and I ask you to look on these things with the recollection that however great may be faith and zeal, justice is one of the earliest born and the dearest emanations from God, and from religion!<sup>9</sup> (A burst of cheering.)

Lord CAMPBELL (with great gravity).—These expressions of feeling must not be repeated.<sup>r</sup>

Sir A. Cockburn continued.—It is a curious thing, gentlemen, that my learned friend, the Attorney General, though he confronted two of the Italian witnesses with his client, did not venture to confront him with any of the English witnesses against him, who came forward one after another to testify to the same kind of things. It is for you to say whether the whole testimony be not overpowering, and whether it is rebutted by his general denial.

Before I pass from the oral evidence, let me say a single word as to the witnesses who are called to speak as to Achilli's character!

<sup>9</sup> Nothing could be finer than his delivery of this noble sentiment, which was obviously the genuine effusion of a generous and noble nature. The burst of cheering which ensued was enthusiastic; and there was not, I believe, a person of education present, who did not sympathize, if they did not share in it.

<sup>r</sup> He never said that, when the coarser portion of the audience cheered him. Those were gentlemen who cheered now; and judge and jury were evidently disgusted.

Who are they? They are seceders, like himself, from the Church of Rome, his associates, having a common interest with him; who, of course, give him the highest possible character. But it is curious that if he should have borne such a remarkably good character, he should have had (as he himself tells us) hundreds of charges made against him! Let this evidence pass for what it is worth! It may be true that he was placed in responsible positions; many a man is placed in such positions, who, if his life were really known, it would be impossible, even for his patrons and supporters, to uphold him any longer.<sup>s</sup>

Gentlemen, I now come to a part of the case on which so much was said yesterday,—the judgment of the Court of Inquisition. It is an important document, if you take its sentence as true; for it recites the various offences I have already referred to, and others of which we have not been able to offer oral proof. You will understand the difficulty which there necessarily must be in obtaining evidence of matters of this nature. And you have observed that some evidence offered has been excluded, on account of its not having been proved in regular form of law, and witnesses not being produced to prove the facts necessary to make it admissible.

Lord CAMPBELL said,—I have examined the document since yesterday, and though I do not at all regret having admitted it in evidence, I must remark that the first portion of it merely seems to state the result of the examination by the notary;<sup>t</sup> then afterwards

<sup>s</sup> The question is, supposing Achilli to have been rightfully accused, when his conduct became really known to the authorities; and, still more, to the Holy See. So soon as the Holy See heard of it, it seems, he was perpetually deprived.

<sup>t</sup> But the notary is declared to be "Notary of the Congregation of the Inquisition," and this is (like all the rest) attested and authenticated; so that it seems exactly analogous to the official act of the master, or other officer, who draws up a judgment of one of the superior courts in this country: for instance, in the Court of Chancery, the Chancellor dictates merely the minutes of his decree, which are afterwards drawn up by the master. Every judgment is, in fact, drawn up by some such officer of the court; the judges only pronounce—they do not record. The only difference between the English and the Italian judgment is, that the former does not state that it is drawn up by an officer, whereas the latter does, which is more truthful. And when the Lord Chief Justice said, "the first portion appears to be the result of the notary's examination," what did he mean? How did it appear? The words are, "After a complete investigation" (which, it is to be presumed, was judicial), "it is proved from the same acts," &c. (*i. e.*, to the court); and then follow the words, "After having weighed, &c., their eminences, the Inquisitors, decree," &c. The whole is absolutely one sentence! Lord Campbell's separation of it into "two portions" is not only arbitrary, but absurd. The notary (*i. e.*, the master), states the whole continuously as equally the act of the court. It is as plainly as possible expressed, that the same judicial persons who had weighed the proofs had received the proofs (or how could they have weighed them?),—and having "weighed the proofs," they decree; and the weighing the proofs is clearly the inducement of the decree, an integral part of it, as much as the recitals of a deed; and the same officer who certifies the latter portion certifies the former portion; so that if the former part "appear" to be the result of his examination, so must the latter; all alike is equally authenticated, as constituting an entered

there comes judgment. I should have hesitated more in receiving it if I had been made more acquainted with the commencement; but as it is, I do not regret having admitted it, as I feel disposed to open the doors as widely as possible, so as to admit evidence which may throw light on the issues. It is an informal document.<sup>u</sup>

Sir *A. Cockburn*.—It is the best that could be got, my lord. We cannot dictate to continental courts, in what form they shall draw up their judgments! We can only take them as we find them. It professes to be founded on certain accusations preferred against Achilli, and his acknowledgment of the charges: we have proved the document in proper form. We were not able to procure witnesses as to some of these charges having been preferred against him. He says they were not. That is for you to judge of. He denies it; for the reason, he says, that questions of immorality are not within the jurisdiction of the Court of Inquisition; and that they exercise jurisdiction over matters of religion alone, and not over the morals of the clergy. But this is the evidence of a deeply interested party; and, on the other hand, we have the evidence of a perfectly competent party, Dr. Grant, a Catholic bishop. Where his see might be I do not think at all material to the truth or value of his testimony, which, therefore, I press upon you. He says he was a long while resident at Rome, and acted for parties there who exercised jurisdiction in other ecclesiastical courts; and that it was his duty to ascertain the jurisdiction of those different courts, and to ascertain the limits of each. Speaking from the knowledge thus acquired, he is enabled to state that the Court of Inquisition takes cognizance of matters relating to faith, and, as regards the clergy, of cases of gross immorality. It is natural to suppose that it should be so. It is the highest court of ecclesiastical jurisdiction; and what is more likely than that it should comprehend within the sphere of its powers, cases of gross offences against morality among the clergy? Accordingly, we find that this particular document professes to be the record of a sentence pronounced upon inquiry into immoralities committed by Achilli. Do you believe the evidence of Achilli on the point, who is interested, or of Dr.

judgment. In a judgment in the Court of Queen's Bench, the master or other officer (after reciting the pleadings on which judgment is given) writes, "therefore, it is considered by the court, that," &c. Now, though he does not say he wrote it all, it is known he wrote it all; and what would be said of a judge, who, on the record of a judgment being "returned" to him, should reject all the pleadings, on the ground that what followed the "*ideo consideratum est*" was the act of the court, and the previous part was only the result of the master's examination? The judgment would be, of course, utterly useless, as it could not be known what state of facts it was pronounced upon.

<sup>u</sup> Because foreign courts are not so formal as ours. It is formal enough, however, on any practical, if not on any technical, consideration; and if rejected on that ground, no foreign judgment could be received. "An informal document," according to our special pleading ideas of formality! Is that a fair way of treating it? Besides, how can we know that it is "informal?" Enough for us, that it is duly authenticated.

Grant, who is not interested, and who has a competent knowledge on the subject? Besides, this observation, surely, is on the surface of the case; it is obvious that it must have been known that the judgment would be produced in this case; and canonists and jurists acquainted with the ecclesiastical law of Italy, could easily have been brought to prove (if it were so) that it had professed to proceed in a matter over which it had no jurisdiction.

LORD CAMPBELL.—We must draw a distinction between the judicial part—the sentence, and the previous portion.<sup>v</sup> It does not set out the offences for which the sentence was pronounced.<sup>w</sup>

Sir A. Cockburn.—It sets out no other but the immoralities alleged; and if these were not the true grounds on which the judgment proceeded, there is no ground at all set forth!<sup>x</sup> This is a court not conducted with such formality as the judgments in this court. It is said, too, that this is the first time a judgment of the Court of Inquisition has been proved in this country;<sup>y</sup> which of itself might show that any particular technicality ought not to be expected. But is it to be presumed to be a wicked imposture in reciting that Achilli had confessed certain offences, for which he was sentenced? Is it to be assumed a fabrication? Achilli says he never was suspended or deprived by any sentence. Now, he admits he was before the Inquisition. Were these charges, then, brought against him? He says they were not; why? because they do not come within the jurisdiction of the court. But we have it proved, by a perfectly competent authority, that they do. Was then a sentence passed? He says not. He admits, however, that he may have thrown himself upon the mercy of the court; not for what is stated here, but for teaching false doctrine; and

<sup>v</sup> See previous note.

<sup>w</sup> Not set out the offences!—"Having confessed himself guilty of," &c. (see the judgment, end of second day). Besides, what a curious objection, after having ruled that the offences recited were to be rejected! The defendant's counsel remarked this at once.

<sup>x</sup> Therefore, either there were no grounds at all, or these were not the true ones. In the former case, there could be no judgment; in the latter case, as the document is entire, and with an entire authentication, the whole must have been fabricated—which was the atrocious theory of the Attorney General. But the Lord Chief Justice rejected that theory, and admitted it as a valid judgment, so the whole ought surely to have been received as of equal validity; for who ever heard of a judgment one half genuine and the other half forged? And who ever heard of assuming fabrication against a record! or even the judgment of an inferior court, not of record. But the Inquisition, as it had been proved in evidence, is the supreme court of Rome. It is to be observed, also, that the judgment is accompanied with the chancellor's certificate, "given in testimony of all these facts," of which, one fact is the confession of the charges recited; and another fact is that the court had considered these facts. Again, the judgment recites that, "The court having considered the defences" (to the previous charges), "and other matters, &c. decree," which is exactly analogous to the "*ideo consideratum est*," of a judgment in our Queen's Bench. Is it rational to reject not merely what comes before, but after, the "*consideratum est*?"

<sup>y</sup> See former note.

what follows? He says, the Pope interfered in his behalf (that same pope whom he abuses so outrageously!), and he was set at liberty on certain conditions! one of which was reconciliation to the Church, and in the mean time he was to be under strict surveillance. What does that imply! Total and entire suspension from all functions of an ecclesiastical character: and then he was recommended "to go for some time to a place of penance." What says the judgment? So far he confirms it to be true. It says distinctly that he was to be suspended and deprived, and sent for three months to a house of rigorous observance. Is that true or false? Gentlemen, we have heard a great deal about the Inquisition—though the Roman must not be confounded with the Spanish<sup>2</sup>—and none of the atrocities can be imputed to the former which are ascribed to the latter. It is not a court which is approved of in this free country,<sup>a</sup> where religion and everything is unfettered, limited only by the laws necessary for the peace and good order and welfare of mankind. We desire no secret tribunals.<sup>b</sup> But do not let us be unjust on that account! Do not let us assume that a court, sitting under the authority of their sovereign to discharge the duties of their office, will put upon record, and send into another court, a judgment which does not exist, or on grounds which were not true, or for a punishment which was not decreed. Can you discredit this document? I think not. And if you believe it, it goes a long way towards confirming the testimony given by the witnesses who have been called.

Let me now, gentlemen, call your attention to a part of the case which is not unimportant. What is the account which Achilli and his friends give of him? Why, that up to 1840 or 1841, he was a man esteemed, honoured, and promoted; the idol of the monks and friars; the confidential friend of his superiors; taken by the provincial on visitations; upheld by bishops, supported by cardinals, loved, honoured, and revered. He goes to Rome: honours await him! Professorships' benefices are offered him; everybody is his friend; the Pope himself is disposed to be his benefactor.<sup>c</sup> Well, this is a feeling and prosperous state of things! How comes it, then, that if these representations be true, in 1841 he was seized by the Inquisition?<sup>d</sup> For erroneous doctrine? What!

<sup>2</sup> Very commonly it is so, by the ignorant.

<sup>a</sup> How many persons know anything about it?

<sup>b</sup> But we have them: grand juries, Court of Chancery (in taking evidence), civil courts, commissions under Church Discipline Act, &c. &c.

<sup>c</sup> And let it be remarked that Achilli declares that for ten years before this, he departed from the doctrines and practice of the Church, in teaching, and was openly at variance, as he was known all along to have heretical tendencies; whereas his friends, the friars, say at Rome nothing was known of his alleged immoralities; and he himself declares that it was not for those things he was deprived. Then what was it for? Not for heresy, as that was an old story.

<sup>d</sup> So summary a process is not usual in cases of heresy; and, on the other hand, such is the course taken when flagrant immorality is discovered in a

he, the beloved and the courted, esteemed and revered of all mankind—he seized and thrown into the Inquisition! Do not these contradictions show that an attempt is made by Achilli to palm off untruths upon you, presuming upon your want of knowledge of the position in which he was placed? Is it not much more probable that what is related by those who have come to give evidence against him, and what is recited in the judgment, is true; and that his excesses had at last reached to such a head, and been so discovered, as to render it necessary for the Church to interpose? He was not removed from Naples, he says; but yet he returns to Naples almost as soon as he had left it, and tells rather a loose story about a lame foot. Is it not improbable, that if, when he reached Rome, he was surrounded by honours and favours, without any imputations upon his moral character, he should have been suddenly cast into prison? And immediately after, a sentence is passed against him, which, he admits, puts him out of the pale of the Church. There was an end of all hope of honour, or dignity, or advancement for Achilli in the complicated hierarchy of the Catholic Church! Can you doubt that he said to himself, “This will not do; I will go to Corfu, or Malta, and get up a Protestant chapel and Protestant congregation.” We have it, surely, clear as proof can make it, on the admission of Achilli himself, that he continued in the Catholic Church, ministering its sacraments, until, after having left Naples for Rome, he got into the prisons of the Inquisition. Now, if he had then in his heart and soul abjured the Catholic faith, how came he so long to continue in the ministry of that Church? He had left Viterbo in 1833; and ten years before, while yet there, he tells us in his book that, though perfectly persuaded of the imposture of the mass, and of the heresies of its doctrines, he continued to celebrate it with a show of devotion. Does not this show you that he was what Dr. Newman has called him, “a hypocrite under a cowl?” Who can dispute it? The men who minister one of the most solemn and sacred acts of religious worship—when their hearts do but despise what their hands perform—who will deny that they are hypocrites! Hypocrites in the matter of religion! hypocrites on the most sacred of subjects! hypocrites, not only before men, but before God, at whose altars their very presence is a sacrilege and a profanation! Gentlemen, is a man of that character to be believed upon his oath?<sup>e</sup> And,

priest. He is at once put into prison.—See numerous instances in the life of St. Thomas of Villanueva, for instance, or St. Charles Borromeo, or any other eminent bishop.

<sup>e</sup> There is a striking parallel between this part of the speech and the argument of Lord Stafford's counsel as to Titus Oates:—“He objected that this witness, according to his own testimony, not only pretended to be a Catholic, while he was in reality a Protestant, but during his voluntary transactions with the Jesuits, had lived in the practice of a religious worship, which in his conscience (at least so alleged!) he believed to be idolatrous. Was a man of this degraded character, —a miscreant of such deep dissimulation and hypocrisy,—admissible as a wit-

on his sole and supported assertions, are a whole body of witnesses to be consigned to the shame, perchance the penalties, of perjury? Is that justice? I hope I do him no wrong; but I own I cannot bring myself to understand how, consistently with honesty, truth, or anything that bears the remotest resemblance to religion, a man can bring himself to convert religion into a mockery—that which should be a sacrifice to God, into a hideous farce! I cannot comprehend how such a man is to be credited against the evidence of witnesses who have no such shameful hypocrisy as that to answer for! Observe how complete, and systematic, and sustained the hypocrisy must have been! The cardinal, under whose eyes he was living at Capua; the provincial, who took him on his visitation tour—would these and other ecclesiastics have supported the man if they had believed that he thought their faith an imposture? He now does his utmost to hold up the practices of the Catholic Church to odium and detestation: yet for years he was mixed up in them, and continued to participate in them, until he is discovered and brought to trial, and sentenced to deprivation; and then, and not till then, he professes himself a Protestant, and he makes us a present of his conversion! And is he a gain to us—a glory to us? He, forsooth, has sacrificed all for conscience sake! He might have been anything in the Church, and he represents himself as having sacrificed all this that he might satisfy the dictates of his conscience and the inspirations of his God! God grant it may be so, but I cannot bring myself to believe it.

Gentlemen, it will be for you to determine upon the conflicting evidence in this case. There is one topic I must advert to before I set down. In pressing certain questions upon the prosecutor I fear I incurred your reprehension, manifested (you must forgive me for saying so) in rather a remarkable manner. Matters of evidence are usually left for the consideration of the judge. I felt it my duty to press some questions as to his general incontinence; and I will explain the grounds upon which I did so. Gentlemen, there may be differences of opinion as to the degree of the religious or moral obligation which attaches to all men as regards continence or chastity. Some men may look upon a departure from the religious or moral law in that respect as a venial matter, others may attach to it a greater gravity. But do not forget, whatever may be the view you take on this subject, that this is the very matter before us, the very subject of the present inquiry. We are considering

ness?"—*Lingard*, vol. xii. chap. vi. p. 236. Let the reader judge, if there were force in the reasoning of Dr. Newman's counsel,—let him judge of the unfairness of Lord Campbell in omitting all allusion to it, or any comments on the value or character of Achilli's evidence,—though he went out of his way to have a fling at the Tractarian clergy, he imputing to them what Achilli had acknowledged of himself! That is, Lord Campbell took no notice of a certain matter affecting the credit of the chief witness and party in the case before him, but took notice of a matter supposed to affect the conduct of parties not at all before him!



whether a charge brought against Achilli of having been guilty of certain excesses is an unfounded charge. Witnesses are brought who depose to certain instances which he denies. How are we to decide between the conflicting testimony? Is it of no importance, by way of ascertaining on which side the truth lies, to ascertain what are the habits of the man in this respect. Is it possible that any men can shut their eyes to the importance of such a test in determining upon a particular instance, whether a man has committed an act of criminality? It does not determine the question; but surely with any person capable of reasoning, the fact that a man is in the habitual practice of violating a moral obligation, must be material in deciding whether he is to be credited when he contradicts a witness who deposes to a particular instance? A man may decline to answer, but his silence is equivalent to an admission that he could say much more; and it may justly be said, "As you profess to come here to clear your character, what matters it whether you were guilty of incontinence with A. B. and C. or D., E. and F.? How comparatively unimportant is a single isolated instance as contrasted with the general tenor of a man's conduct? What do you think of a man who says, "I am ready to answer you in a particular instance—I will swear I am innocent; but, though I profess to have come here to clear my character from these aspersions, I will not say a word as to my general habit! Here is a man who professes to have instituted these proceedings against Dr. Newman, to clear his character from these imputations: witnesses are brought against him; he denies their statements; then, to test the evidence, he has been asked what has been his conduct in other cases, and he declines to answer! "I could answer no, but will not." Why do you not? Why clearly because, in the face of your own friends, and intimates, and associates, the apostate monks—you dare not deny it! Does such a man vindicate his character? Is he the man to say, "The witnesses who have spoken against me are perjured, and are not to be believed!"

And now, gentlemen, I have gone through this case. I have only to beg you, in conclusion, to bring to the consideration of it calm and dispassionate minds. It must be apparent to you that if the matters that have been alleged against Achilli by Dr. Newman be true, he was justified in calling attention to the character of the person who was, as a witness,\* impugning the Catholic doctrines and the practices of the Catholic Church; denouncing licensed immoralities as well as erroneous principles; and doing so by stating things as of his own knowledge. Surely in such a case there must be a right to inquire into the character of such a man who comes forward as accuser and witness. And that is what Dr. Newman has done in this case. He was not the first to do so. As I have already said, this very book of Achilli's discloses that these matters were brought before the world in the *Dublin Review* in 1850. Why was that allowed to sleep, unvisited by any legal proceedings on the part of Achilli, for

a year and a half? Then, when these matters had come repeatedly under the attention of his fostering patrons, with whose favour and protection he has ministered in this country, and who bring him forward as a great conversion; they,—who felt that unless these imputations were removed, his usefulness in that capacity would be destroyed,—they call upon him to come forward and “vindicate his character” from these aspersions. His everything—his existence—his all is at stake—and on his sole oath you are asked to disbelieve them all, and place implicit reliance upon it in opposition to the evidence of many respectable witnesses!

Gentlemen, I ask you to take these things into your calm and dispassionate consideration. I know the difficulty I encounter,—I have felt it from the commencement. I have felt all along the disadvantageous ground upon which I am placed in defending Dr. Newman. We have here two great champions of opposing Churches—two converts from the faiths in which they were bred: both come forward, each to assert and maintain the truth of the Church he has joined; and I am pleading for one, a Catholic, before a Protestant tribunal. And the difficulty I feel must be, in such times as these, greatly enhanced. The spirit of proselytism, re-unkindled after a long sleep, has again arisen; and the Catholic, with upraised cross, and the Protestant with open bible, have entered into the arena to contend for domination over the interests of mankind. God prosper the truth, say I! Of course we are all interested, from the natural feelings of our minds, for the religion to which we belong; in the triumph and success of one of these two causes, our feelings have been recently kindled afresh, with an energy, which, until then, we had not known in our own time, elicited by any contests which had arisen. And with these feelings fresh in our minds, we have a case like the present, where the religious opinions seem to have come concentrated into one focus. Forgive me, gentlemen, if I ask you to bring to the case the best and calmest judgment you can bring to bear upon the evidence! I cannot shut my eyes to the manner in which your feelings on the subject of religion may in this case bias your understandings in determining this case. Gentlemen, these halls, in which this inquiry is now taking place, have not to day for the first time been witnesses of justice miscarrying upon questions of religious controversy! There remain (unhappily for our fame) in the pages of our history, transactions, here done—here—in this great hall, which is associated with (I grieve to say) the darker as well as the more glorious epochs of our history, here have taken place in former times, in justice and judicial proceedings: over those periods, history would willingly draw a veil, were it not that by holding up her beacon-light she warns posterity against the errors of the past, and guards them against those passions which deaden the conscience and steel the heart. Those days, when human life was sacrificed to religious bigotry,—thank God the time is gone by! We

now know that innocence rests safe under the judges and the liberties of the land. Still there have been times when juries, and even judges, have lent themselves to judicial murders on the score of religion! The present are different times, but the same feelings that then preponderated may with insidious subtlety shut your ears and blind your eyes to reason, and may induce you not to bring to the present case the same clear understandings that I know you would exercise on any other. I ask you, if you can, to give the evidence your calm consideration; and if you do that, I entertain the strongest confidence your verdict will be for the defendant. (Applause.)

The *Attorney-General* then rose and addressed the jury in reply on the part of the prosecution:—

Gentlemen of the Jury,—My learned friend, in one of the most impassioned and eloquent addresses ever delivered in a court of justice, after urging every topic calculated to excite your passions, has exhorted you to calmness, and has spoken of the great advantage which Dr. Achilli possesses from the course which this investigation has taken. But I must beg leave to remind you that this is the first time his counsel has been heard upon the matters of which he was accused.<sup>f</sup> My learned friend virtually opened the case upon these various charges, in a speech, almost as powerful and impressive as that we have just heard, commenting upon and pressing the proofs as against Dr. Achilli, before the voice of his counsel had been heard. The whole case is now before you, subject to his observations and the directions of the judge. All that the bitterest hate, the most unwearied industry, the most unbounded resources, and unlimited means could combine for the destruction of one man—a most formidable adversary—has been accumulated; and it is for you to say whether the whole body of the evidence produced is of such weight as to crush the prosecutor, or whether it will crumble into dust at the touch of impartial investigation!<sup>g</sup>

<sup>f</sup> Which was his own counsel's fault, who shrunk from going into the case until he had put Dr. Newman to the proof of it, throughout treating it as a question not whether the charges were true, but whether they were proveable, a prudent course for any client, but surely scarcely satisfactory as to innocence.

<sup>g</sup> The most fitting comment upon the very scrupulous speech of the Attorney General, may be found in a brief extract from a description of the conduct of the prosecuting counsel in the case of Lord Stafford:—"They detailed to the audience all the pernicious doctrines so often and so falsely attributed to the Church of Rome,—as, that faith is not to be kept with heretics, and that actions vicious of their own nature, become virtuous when their object is the benefit of the Church. They spoke of the Jesuits—they called on the lords to display their love of truth, and zeal for the Protestant cause. The condemnation of an innocent man seems not to have alarmed their consciences. They acted as if they thought it their duty to employ all the resources of their ingenuity to procure a conviction, leaving it to the Court to detect the fallacy of their reasoning, to remove the web which they had so artfully woven, and sift out the truth from the chaff under which they had buried it. If injustice were done, the judges and not the advocates were responsible."—*Lingard*, vol. xii. chap. 6, p. 230. (If Sir Frederic relied on this, it was a poor reliance in this case.) In both

Gentlemen, there never has been an instance in an English court of justice, in which a trial has taken place under similar circumstances! My learned friend has told you, that though this is a complaint against Dr. Newman for having published a libel on Dr. Achilli, the charges are those on which Dr. Achilli is accused. Now every court of justice allows to the meanest criminal that privilege which has been studiously taken from Dr. Achilli.<sup>h</sup> Remember that my learned friends desired all the witnesses to be removed out of court, and the necessary consequence was, that Dr. Achilli was removed, and was thus prevented from giving instructions for their examination as the case proceeded.<sup>i</sup> Gentlemen, I think that as my learned friends have been studying the proceedings of the Inquisition, they have rather followed the Roman form on this occasion! Notwithstanding this, however, I have never known an instance in which a man stood so fearful an ordeal as did Dr. Achilli, in an examination which lasted seven hours. And I ask you whether anything but his consciousness of truth could have enabled him to stand such a trial! <sup>j</sup>

Gentlemen, my learned friend has suggested that this is a subject of religious controversy; he has referred to the flames of religious bigotry as re-unkindled in this country; he has stated that two champions of antagonistic Churches are before you; and he has supposed that I might possibly seek to excite your religious prejudices, and appeal to your religious feelings. But, gentlemen, I shall call upon you to decide from no motives of such a nature!<sup>k</sup> I should be perfectly ashamed of myself if I were to endeavour to excite prejudice on such grounds!<sup>l</sup> This is not a question of religious controversy!<sup>m</sup> If it had been, you would never have been troubled with this inquiry! But Dr. Achilli says: "In the conflict between us, you, Dr. Newman, have chosen to use poisoned arrows;<sup>n</sup>

instances, a monstrous and unscrupulous theory was invented, of a conspiracy between pope, cardinal, and Jesuits.—(p. 231.) In each case there was a pretended plot which in both cases no one can doubt was not in the least believed, but put forth to inflame the passions and prejudices of the vulgar. Has no greater improvement taken place in the morality of the bar?

<sup>h</sup> In a case where he is indicted and arraigned for punishment; but who ever heard of such a principle in cases of criminal information for clearing of character. The one is a compulsory proceeding, the other voluntary.

<sup>i</sup> Much he must have required this opportunity after about two years' notice of the charges. Besides, he had it after all, for he had the evidence taken *verbatim*, and written out each night.

<sup>j</sup> But did he stand it? He stood in the box, it is true; but the question is if he stood it morally, not physically. The writer believes it was the general opinion at the close of his cross-examination, that he had not "stood it," but had, notwithstanding general denials, confirmed every witness against him.

<sup>k</sup> Only suggesting that friars and eminent ecclesiastics had conspired to suborn perjury and commit forgery, and that every Catholic must be capable of such crimes.

<sup>l</sup> It is a pity he was not ashamed to do so.

<sup>m</sup> Not properly, no doubt. But was it not made so?

<sup>n</sup> Had Achilli not used them? (See the note on his book.) It was the advocate as well as the client who used them. The poison exists only where there is falsehood. And let the reader judge as to the truthfulness of this speech.

and you have assailed my character : if you can establish the truth of your charges, the law will protect you, but if not, you must be convicted as a malignant libeller !”<sup>o</sup>

My learned friend has said, indeed, that Dr. Newman had no personal feeling. Gentlemen, we cannot dive into men’s hearts, and discover the secret motives lurking there ! We must judge of men by their acts, and if we find, in coarse language,<sup>p</sup> serious attacks upon the character of Dr. Achilli, we must presume that there is some motive which actuated him ; and we can attribute it to nothing else but that feeling of hatred which does not require personal knowledge of the individual to be engendered. Dr. Newman has exhibited all the energy and zeal of a proselyte ;<sup>q</sup> he, too, turned from the Protestant faith to the Catholic. My learned friend admits that Dr. Achilli, who has embraced the Protestant faith, is a man of great learning and eloquence ; he is a most formidable antagonist of that faith which Dr. Newman has embraced ; and these feelings may well be enkindled, even although Dr. Achilli be unknown to him ; and his hatred may be as strong as if they had come into personal collision.

But, then, my learned friend said that these matters had been made public long ago in the *Dublin Review*, which Dr. Achilli himself has attributed to Cardinal Wiseman, by the Pope’s creation, archbishop of Westminster. Very true ; and if Dr. Wiseman could have thrown off his mask, and avowed the article,<sup>r</sup> Dr. Achilli would have been quite ready to enter the lists with him at the earliest opportunity. But Dr. Wiseman preserved his *incognito*.

<sup>o</sup> Not at all. Such an inference of course would suit Achilli and his counsel, who shrunk from producing him till he had put his answer to the strictest proof. But the question with public opinion will be, not whether the charges were proved, but whether they were true : the verdict does not even show that they were not proved, for it is notorious that it was not a fair trial. Besides, legal proof is one thing, moral evidence another. Again, the man is in no danger of being deemed a malignant libeller who states what he believes to be true. Now, did Sir F. Thesiger really believe the atrocious charges he put forth without the semblance of a reason ? If not, then it is the Attorney General who must defend himself from the charge. Can he do so by the “ licence of the bar ? ”

<sup>p</sup> This was as bad taste as the “ ribaldry ” of Lord Campbell. Nothing more severe need be said of it, or could be said.

<sup>q</sup> It should be mentioned that Sir Frederic has a great power of sarcasm ; he shines in sneering. This is not a usual attribute of a generous mind ; and though no doubt he is in private character honourable, and high spirited, no traces of a truly noble nature will be found in his speeches—no genuine bursts of feeling such as constitute eloquence, and are to be found, for instance, in the speeches of Sir A. Cockburn. Sir Frederic is, as an advocate, audacious, artful, and sarcastic ; and this speech will amply exemplify the description. But no noble forbearance will be discerned in it.

<sup>r</sup> This argument was an imposition. Achilli could of course have compelled the publisher to give up the author, under pain of bearing all the consequences himself. Now, is it fair for counsel to impose on juries by such misrepresentations ? And if they do, ought not the judge to correct them ?

It was not until he saw these "Lectures" appear under a name once respected,<sup>s</sup> that he felt he had met an adversary who was visible, and ready to come forward in the open course of day, and with whom he could contest. He therefore proceeded against the publishers. Dr. Newman at once fairly came forward; and this was the first opportunity Dr. Achilli obtained of meeting his adversaries in a court of justice.

Gentlemen, you have heard the charges which are now brought forward against him on the plea of justification, extending over the whole history of his life.<sup>t</sup> Was there ever a man placed in such a situation? It is admitted that he is virtually on his trial.<sup>u</sup> If he were actually so for the purpose of punishment, some specific offence would have been selected and established against him, and no other matters could have been entered into, nor could he have been put to the question; and, under these circumstances, he would have been in a far more favourable position as an accused person than he can possibly be in the present prosecution; for he is now called upon to answer for twenty-six years of his whole life!<sup>v</sup> arranged into twenty-three charges. And it is almost impossible, when his counsel is addressing himself to one of these charges, to avoid entering into others. But notwithstanding all these disadvantages, and though your minds have been twice over-impressed by the powerful addresses of my learned friend, I have not the slightest apprehension that, without any prejudice being appealed to,—without your minds being led to anything but a desire to do justice to this most important case, — I shall ultimately satisfy you that there is no ground for supposing that he has succeeded in establishing any one case against Dr. Achilli, and that consequently I am entitled to your verdict.

Now, gentlemen, in the first place, that we may narrow the field of observation, and be better able to direct our minds to that which I admit the most important part of the case, it is right to draw your attention to various charges which have been placed upon this record, but of which there is not the slightest proof.<sup>w</sup>

<sup>s</sup> Another sneer. For his own sake, it is well for Sir Frederic if he be as truly respected as Dr. Newman is, and ever will be.

<sup>t</sup> Was not the burden far greater on Dr. Newman to have to prove them, than on Achilli to have to meet them? especially as the latter would not answer to them until they were put to the proof?

<sup>u</sup> Voluntarily, not compulsorily, which makes all the difference. He challenged inquiry first by his book, and next by his prosecution.

<sup>v</sup> Not at all. He called on Dr. Newman to enter into all that history.

<sup>w</sup> Is that so? Dr. Achilli declined to answer as to any acts but those specifically stated in the plea; and by a strict application of those rules of special pleading which have just been swept away by the Common Law Procedure Act, his counsel forced Dr. Newman to so particular a specification, that it was scarcely possible to procure positive proof to correspond precisely with it; and Achilli only swore to the negative of that strict specification. Of the value of such a species of swearing, the reader can easily satisfy himself by referring to his cross-examination on the Gentili case, where he swore he had not been visiting in the

It is alleged in charge 4 that Dr. Achilli, as early as 1826, was deprived of his faculty to lecture. Now, the only lectureship he obtained at Viterbo was in 1827; yet he is, in 1826, accused of being deprived of his lectureship, for an offence which his superiors wished to conceal! <sup>x</sup> He continued in that lectureship till 1833; and here we have an example of the rashness with which the charges against him have been made. The fifth charge is that, in 1827, Dr. Achilli had already earned the reputation of a scandalous friar. It has been said, "Slander well, and some of it is sure to stick."<sup>y</sup> Yet two monks at Viterbo have been called, and have sworn that Dr. Achilli held a high reputation at the period referred to, <sup>z</sup> and this character has been proved to have been maintained by him for ten years after. <sup>a</sup> It is established that he was employed in offices of trust, as, for example, to confess persons of both sexes; that in 1835 he was sent a visitor to the convent of Neppi; that when at Rome he preached the Lent sermons; that at Naples he was sent for to preach before the duchess of Saxony; and that in 1837 he was appointed prior of the Dominican Convent. Can you believe, with such evidence before you, then, that in 1827 he was a friar of scandalous reputation? Can you think so with the fact that he held various offices down to 1835, when he obtained his letters of secularization, which were not completed until 1839?

It was alleged, in the seventh charge, that Dr. Achilli debauched Rosa di Alessandris, and in September, 1833, was found guilty by the bishop of Viterbo. In the twelfth charge, this is alleged to have been committed in the sacristy of the church of St. Gradi, Viterbo; and in the twentieth charge he is alleged to have given fifty seudi to the father of Rosa di Alessandris, as hush-money. Now, no evidence has been given on this subject for the defendant; but Dr. Achilli has stated that he had a relation, a nun, of that name,—that her father died when he was a child,—that he had never had such an accusation brought against him, and that the whole was untrue. It has been said that the papers of the police-court in Viterbo have

house of a Gentili, when it turned out she was a Gentili, and went by that name, though she had married a gentleman who had left her a widow. Therefore the very acts he would not speak to, may have been the very acts alluded to in the plea, with some trivial or nominal mistakes.

<sup>x</sup> Sir A. Cockburn had mentioned a mistake in the date!

<sup>y</sup> Probably the reader will think, referring to the note upon Achilli's book, that he rather acted upon that principle; for, as Sir A. Cockburn justly remarked, there is this difference between his charges and Dr. Newman's,—that the former were so vague and general, that they could not be grappled with, and at the same time so sweeping that they involved whole bodies and classes; while the latter were distinct and specific, and pointed at a particular person, who had every possible facility for meeting them.

<sup>z</sup> One of them declined to answer any questions as to his previous conduct, even the time of his alleged conversion! and the other was a poor refugee, private secretary to Father Gavazzi.

<sup>a</sup> Achilli himself discloses that during the whole time he had been the subject of repeated remonstrances, representations, and reports, and his history is one series of removals.

been burnt during the revolution ; but this was not a police case.<sup>b</sup> Then I come to the eighth charge, in which it is alleged that, in July, 1834, Dr. Achilli debauched another woman, whose name is unknown ; but who, nevertheless, it is said, " was chaste and unmarried." <sup>c</sup> (Laughter.) But the jury have it in evidence that the greater part of that year he was on a tour of visitation, with time and place given, and means of contradiction, which, had proof been attempted, would have been incontrovertible.<sup>d</sup> Then there was the ninth charge, which sets forth that, in 1835, Dr. Achilli had debauched Vincenza Guerra, at Viterbo. Now, in 1835, Dr. Achilli never was in Viterbo, but preached the Lent sermon that year. The patent of his appointment has been produced, dated 21st April, 1835, with a patent to confess persons in Capua ; and he exercised that office in that year. It is said that he was convicted of these things before the Inquisition, whereas the fact is that he was never within many miles of the place.<sup>e</sup> The thirteenth charge is, that in 1841, at Rome, Naples, and Malta, Dr. Achilli spoke against the Eucharist and chastity, and by this corrupted various persons. Now this shows how these charges have been fabricated, for here some persons, who it is said had been debauched in 1831, appear as again led astray by the preaching and teaching of Dr. Achilli in 1841.<sup>f</sup> The twenty-first charge sets forth that, by an official document in the archives of the police-court at Naples, Dr. Achilli was convicted of habitual incontinence. In support of this charge, my learned friends produced a document, procured from the minister of ecclesiastical affairs at Naples. Gentlemen, we have recently had a little revelation as to the character and credit of the Neapolitan police ; and it was necessary, if they proposed to give one of its reports in evidence, to go to the fountain head, or satisfy us that the ecclesiastical department was the proper depository for documents of that description. A Roman Catholic solicitor, of great respectability, who was sent abroad for the purpose, was unable to give any information as to its authenticity, though he

<sup>b</sup> How so ? The Principe case came before the police. Then why did he exclude the document, if it could have nothing to do with the charge ?

<sup>c</sup> A sorry jest upon the formality of the plea, which the prosecutor's lawyers had stickled for with the utmost strictness.

<sup>d</sup> This tells against Achilli, for if he were absent from Viterbo at the time at which the charge is laid, he could have proved the fact.

<sup>e</sup> Lent does not commence till about March ; and he might have been back after Easter.

<sup>f</sup> A repetition of the wretched jest upon the necessary formalities of the pleadings. The time was not material ; and as to the substance, it was sworn by several witnesses that Achilli had told them " it was no sin." Sir Frederick of course did not mention this. He shrunk from the evidence, and contented himself with sarcasms and sneers.

\* What a monstrous misrepresentation ! He gave full information about it. Where should a report about ecclesiastics be but in the Ecclesiastical Department ? Who ever heard of reports from the police being found at the Department of Police ?



had the means of doing so, as he had resorted to the police authorities ; and so the document was excluded upon an objection I felt it my duty to take. My learned friend said, on one occasion, "What! do you shrink from the truth? Are you afraid of an investigation?"—an observation intended to create prejudice in your minds. I know the case will not be decided on such grounds ; but I have felt it my duty to confine the investigation strictly to the charges which Dr. Achilli came here to meet.<sup>h</sup>

These, gentlemen, are the matters upon which no evidence has been adduced, and upon which Dr. Newman must necessarily be found guilty. And now I will proceed, step by step, to the other heads of accusation against Dr. Achilli ; and I shall be able to satisfy you that there is no ground for any of them.

Gentlemen, the first of these charges is, that Dr. Achilli has been an infidel. Now it will hardly be asserted on the other side that any peculiar meaning for the occasion is to be given to this expression. Everybody understands, by the term "infidel," one who denies the inspiration of the Scriptures, and the Divine origin of the Christian religion. Gentlemen, Dr. Achilli has never been an infidel in that sense of the word. It is alleged that he preached against the Eucharist and absolution. If it be meant that, because Dr. Achilli did not believe in transubstantiation or auricular confession, that he is therefore an infidel, I say,—without the least levity, but with a strong feeling,—I hope the number of such infidels will daily increase! Gentlemen, with all the trembling anxiety suited to such sacred subjects, I make only those remarks which are necessary to show that the charge is not substantiated. Dr. Achilli is next charged with being a hypocrite under a cowl ; and you have heard some eloquent passages from his book to support this accusation. I will read another passage from it, in which he says,<sup>i</sup> "I already disbelieved in the virtue of the cross ; take away the doctrine of transubstantiation, and the mass is nothing but a lie,—a solemn imposture." Then he goes on : "From this time, in saying mass, I had ceased to believe in what I did. I was like Luther, and many others, who no longer believed in the mass,—who had rejected its doctrines and refuted its errors,—but still continued to celebrate it. \* \* \* Although I myself no longer adored \* \* \* yet there never failed to be some who adored, believing ; and therefore I could not help looking upon myself as the agent of idolatry." And upon this it is said that he was a

<sup>h</sup> Exactly so ; he first pins Dr. Newman down to technical strictness of pleading, and then to technical strictness of proof. And this is called "clearing his character!"

<sup>i</sup> "While advocating and teaching with great zeal the Romish doctrine." Achilli's own words (which his counsel took care not to read), just before the passage cited. And directly afterwards the unhappy man says, the more he advanced in spiritual light, the more he was averse to the hypocrisy of the priests! They were hypocrites for doing what they believed in ; he is "averse to hypocrisy," doing what he did not believe in!

hypocrite; because for ten years he practised what he believed an imposture, and was the agent of what he considered idolatry. Gentlemen, here you have the description of a strong mind struggling with doubts! You have an example of the course which is followed on all occasions.<sup>j</sup> It is difficult for a man to tear himself from his ancient faith.<sup>k</sup> There are so many associations intimately interwoven with it, that it is almost impossible for a person all at once to disengage himself from it. A reference is made to Luther,—you all remember how he struggled with himself till his strong mind was bowed down with exhaustion; and it was only by degrees he advanced to the position he afterwards assumed. So with the great Reformers of our own Church. From year to year they progressed to conversion.<sup>l</sup> And does anybody believe that because Luther remained in the Church in which he had been born and bred, until his thoughts had ripened into conviction, and the full light of truth poured upon his mind, Luther would properly be characterized as a hypocrite?<sup>m</sup> But, gentlemen, who is the person from whom these charges proceed? From Dr. Newman! Was he suddenly converted? Did no doubts intrude into his mind while he was a member of our Protestant Church! Did conviction flash at once upon his soul? Did he lie down at night a satisfied and contented Protestant—disbelieving in transubstantiation, confession, and absolution—and rise up in the morning a full blown Romanist?<sup>n</sup> Strange that such an

<sup>j</sup> Even Lord Campbell shook his head at this, and evidently was disgusted; yet so resolved was he not to say a single word against Achilli, that in his charge he vents his disgust, not at him, but at the Tractarian clergy!

<sup>k</sup> But he had “torn himself from his faith,” being persuaded it was an imposture. The only thing he had not torn himself from was his professorships, and so forth.

<sup>l</sup> It will be seen, Sir Frederic argues all along on the Protestant theory, that faith is obtained by reason; but St. Augustine wrote an essay on the “Advantage of believing,” in which he shows that conviction does not necessarily involve it; and a greater than Augustine (though he is quoted in the homilies of the Church of England), teaches, that “faith is the believing of what is not seen; *i. e.*, neither by mind nor sense: in conformity with which the Catholic doctrine is, that faith is infused in baptism, and is only lost by sin, and accordingly the sublime baptismal service commences, “*Quod petis ecclesiæ Dei?*”—to which the answer is “*Fides.*” On this theory, no one baptized and bred in the Catholic faith would ever lose it except through falling into sin. The reader is invited to scrutinize the history of all converts to Protestantism from Luther to Achilli, to satisfy himself on this point.

<sup>m</sup> Those who have read even such a life of Luther as Michelet’s, will probably think him rather chargeable with brutality than hypocrisy; and those who have read such a history of the Reformation as Maitland’s, may perhaps think our Reformers chargeable with both. Luther was expelled from the Church before he disbelieved in the mass, but he believed in it long afterwards; and so with the English Reformers; and if they are chargeable with hypocrisy, it was rather in professing to reject doctrines they really believed than in pretending to believe doctrines they rejected.

<sup>n</sup> The fallacy is flagrant of comparing the cases. The one was the case of a man who had lost his faith for ten years, the other the case of a man by degrees

argument should proceed from such a course. If this is to be the hypocrisy which is attributed to Dr. Achilli, he shares it in common with the ornaments of our faith, our church, and our religion; and he is contented to suffer the imputation, more especially in consequence of the quarter from which it comes!

Gentlemen, I now come to the case of Elena Valente. My learned friend anticipated that I should offer some observations about Italian witnesses. I think that there has been some intimation of the interest felt in Roman Catholic countries in this inquiry. It is clear that great facilities have been given to persons seeking evidence, and that a Roman Catholic solicitor of great respectability was in communication with a personage high in the Romish Church, whose name he wished to communicate privately to his lordship. Why this mystery in respect of matters to be made the subject of a judicial inquiry? Did Mr. Harting think it was at all wrong in going abroad to procure evidence? Why, then, this anxiety to conceal the name of this individual? Was he afraid that it was coming too near the precincts of the Vatican,<sup>o</sup> and that a suspicion might arise that in the highest quarters in the Romish Church so great an interest was taken in this contest? upon which must depend whether Dr. Achilli is to continue a formidable antagonist, or be crushed? Gentlemen, I think it is due to the interests of justice and truth to remind you of this circumstance, and to beg you for yourselves to consider, whether it is capable of any satisfactory explanation, consistently with a desire that only the truth should be arrived at. Again, we have the fact that Elena Valente has been sent over to this country for the glory of God and the honour of holy mother Church. Nor is this all. She next says she concealed the fact for twenty years from all but her confessor; yet her curate, who could have known nothing of the matter,<sup>p</sup> is found advising her to come over, for the glory of God, and the good of the Church! Gentlemen, in judging between the witnesses, let me remind you of some circumstances as to their credit. Where do they come from? They are Italians, who return to their native country when their work is done, uninfluenced by public opinion, and likely, even if they have failed in the truth, for the honour of the Church and the glory of God, to obtain from their tender-hearted confessors a very easy absolution.<sup>q</sup> Dr. Achilli, on the acquiring conviction. And who says that Dr. Newman remained in the Church of England after he had acquired that conviction?

<sup>o</sup> This is the deliberate suggestion of a complicity in conspiracy, perjury, and forgery, on the part of the Holy See. If this be not the meaning of the insinuation, it meant nothing; but the tone, and emphasis, and countenance of the speaker sufficiently showed there was a meaning, and a most malignant meaning.

<sup>p</sup> This is a most monstrous perversion of the evidence: the witness stated that Achilli had mentioned it to one of his friends, and that messages went from him to the girl.

<sup>q</sup> Sir Frederick found fine scope for his sneering here; and no one can conceive the contemptuous expression of his sarcasm. But he forgot his client.

other hand, is a preacher of the Gospel here,<sup>r</sup> is bound to England, as shut out from Roman Catholic countries, and is exposed to all the consequences of perjury. But how do these witnesses come here? Valente and the Principes have been living together; they have compared notes; and now let me refer to a curious coincidence in the evidence which they gave. The offence as to Rosa di Alessandris is charged to have been committed in the sacristy; and as to the girl Principe is said to have occurred on Good Friday. In the plea of justification no allusion is made to the offence as to Valente or Principe, that it took place in the sacristy; but when the two witnesses came here they both said so.<sup>s</sup> Gentlemen, this leads me to remark on the course, in my opinion, very unfair, which my learned friend adopted in the cross-examination of Dr. Achilli. Gentlemen, Dr. Achilli came into court to meet the specific charges against him;<sup>t</sup> he was ready to answer on each charge, but was pressed whether he had not been incontinent with other women. Dr. Achilli availed himself of the privilege of the law; but is a man to be denied the justice which the law allows him because at any<sup>u</sup> period of life he may have forgotten those rules of morality which are obligatory on us all? If such a question were put to the wisest and best among us, we should find it very difficult to answer in the affirmative, with truth, and according to conscience. I know of no distinction between persons in holy orders and laymen in this respect; nor between the vow made by a monk or priest, and that which is made for us all at our baptism, and which binds all to chastity. And is Dr. Achilli to be prejudiced because he refused to say if at any time he had broken this obligation? On the contrary, I say that it tends to his credit as a witness. If Dr. Achilli had come determined to deny everything, what prevented his contradicting that he had ever sinned? How could his credit have been impeached, except from our knowledge of human nature, and our knowledge of the operation of that law of celibacy, which prevailed in the Roman Church? I ask you, therefore,

What evidence is there in the case of "tender-hearted confessors," and "easy absolution," except as to him? Other confessors are shown to have given good advice, to abstain from sin and avoid the occasions of it—the notorious condition of absolution—as Sir Frederick can scarcely fail to know. What shadow of evidence, what semblance of pretence was there for this coarse and calumnious imputation, except as to his own client, who, it was sworn repeatedly, said it was no sin, and asked one of the girls to "confess to him!"

<sup>r</sup> He himself stated that he had ceased to be so two weeks before the trial, at least where he had been for a year or two. Another of his numerous removals. Surely the whole argument applies rather to him than them. For the last twelve years he has been ambulatory, whereas they have lived in the same place all their lives. And pray are they not punishable for perjury in their own country?

<sup>s</sup> Queer reasoning this! that anything not stated by the pleader is not to be believed.

<sup>t</sup> Exactly so; in other words, only to put Dr. Newman to technical accuracy of proof on precise specification.

<sup>u</sup> The questions were as to every period.

whether the withholding of that denial does not add to the credit of Dr. Achilli's testimony in other respects? Gentlemen, I now turn to the evidence of Elena Valente. How is she confirmed? She gave no dates. [Mr. *Badeley*.—Dates are not material.] My learned friend says dates are not material, and he is technically right but morally wrong!<sup>v</sup> I ask then, again, how is she confirmed? Stress has been laid on a contradiction or equivocation in the evidence of Dr. Achilli, who at first stated that he had not visited at the time in the house of a Gentili, and afterwards admitted that he had then at that time visited a lady whose maiden name was Gentili, but who had been married and was a widow. But Elena Valente said two brothers of the husband (Christopholi) were there; and if ladies in Italy retain their surnames on marriage, the rule does not, I suppose, apply to gentlemen, or they would be Christopholi, and not Gentili. Therefore, the argument falls to the ground.<sup>w</sup> But, observe, twenty years after the events they go to hunt up evidence; they make inquiries; they find the name of a Gentili, and never hear of the other name of Christopholi. Elena Valente, on the other hand, would know nothing of the lady's maiden name of Gentili, but only the married name of Christopholi, and thus it is clear the persons who were at work to procure the evidence, were led into a mistake, in consequence of there once having been a lady named Gentili, who was afterwards a Christopholi, of which they were not aware. Well, gentlemen, twenty years afterwards, this accusation is brought against Dr. Achilli. At that time he was publicly lecturing and preaching, no one breathing anything against his character;<sup>x</sup> and, twenty years afterwards, in the streets of London, there is heard a voice calling him to account for this act, alleged to have been committed so long ago, no person having heard of it in the mean time, except the confessor, who is dead,—not even her mother!<sup>y</sup>—Yes, I am mistaken, there was a remarkable fact stated by the witness, that on one occasion a person came to her and told her that Achilli had mentioned it to him, and she supposed he had told her this for the purpose of inducing her to commit the sin with this person, his friend! and yet Dr. Achilli is supposed to have preserved his reputation in the Church, and passed from one office to another!<sup>z</sup> Gentlemen, Dr. Achilli solemnly denies ever

<sup>v</sup> Here is an instance of professional audacity. The reader will think Mr. *Badeley* "morally right," in thinking the substance of a charge alone is in question.

<sup>w</sup> Why? The whole of this part of the Attorney General's argument was, and at the trial, and is to me still, perfectly unintelligible.

<sup>x</sup> In his book (which is in evidence), he states that the general of the order refused to allow him to remain at Viterbo, and ordered him to renounce his professorship, and repair to Rome,—that there were then "evil" reports against him, and that he was forced to leave Viterbo.

<sup>y</sup> A woman seduced, and wishing to continue in sin, would naturally keep it secret, and she says she gave up confession after the second commission.

<sup>z</sup> Who supposes that? The evidence shows just the reverse. (See note above.)

having seen her, and it is for you to say whether you believe her statement under these incredible circumstances. Here is the whole case at Viterbo, though five are charged; that of Valente and four others, those of Rosa di Alessandris and Vincenza di Guerra; and two strangers, as to whom no proof is offered.<sup>a</sup>

The next witness is Principe, and to her the same remarks apply as to Valente.<sup>b</sup> The crime here is charged to have been committed on Good Friday; and though it happened in 1840 this might have enabled Dr. Achilli to fix on the day, and state where he was during the whole of it. But she states it to have occurred in November or December. Again, she states her age to have been about fifteen, and she was twenty-five years old when her daughter was born, but her mother says her own age is fifty-nine, which makes her to have been born in 1793; and so the daughter must have been born in 1818, and therefore twenty-two years old in 1840, and not fifteen.<sup>c</sup> There is another circumstance, also, to which I must call your attention: the girl, in her first examination, only spoke of one occasion. My learned friend, the Solicitor General, in his cross-examination, confined himself to that; but on re-examination, the next morning, she stated that it had happened on several occasions; no doubt her memory had been refreshed by sleep!<sup>d</sup> What confirmation is there of her story?<sup>e</sup> Is it not incredible? These are the two Italian

Valente says, she is forty years old: then she was born in 1812. She says this happened when she was eighteen years of age: then it would be about 1830. Now, in 1833 he states in his book (which is evidence), that he was forced to leave Viterbo; and that there were "evil reports" against him. And from that time forward, if he passed from one office to another, he passed from one place to another. In 1835 he got leave to secularize, and in 1839 he left the order. In 1840 the affair of Principe is stated to have occurred, and in 1841 he is perpetually deprived of the priesthood.

<sup>a</sup> This is not true. The judgment states his confession of crime, with many women at Viterbo, and he on oath did not deny it. Now, what do names matter in a proceeding to clear character? The reader will remark the monstrous and repeated misrepresentations of the evidence by the Attorney General.

<sup>b</sup> Namely, that she is not to be believed,—first, because an Italian; secondly, because she is a Catholic; thirdly, because Achilli contradicts her.

<sup>c</sup> An old woman of sixty years of age, examined in a foreign country, through an intrepeter, makes, or is imagined to have made, in the hands of the most crafty and subtle cross-examiner of the day, a slip in recollection as to her exact age at the time of her marriage, a quarter of a century ago; therefore she has committed perjury! And after all there is not even a slip. The poor woman said she could not recollect well how old she was at her marriage; and her error is the substratum of the argument—more ingenious than ingenuous.

<sup>d</sup> Why, the girl was only asked on the first occasion, on her first examination. What would have been said of her if she had volunteered half-a-dozen others?

<sup>e</sup> 1. The evidence of her mother. 2. The fact that they were before the police about it. 3. The fact that Achilli appears never to have claimed to be confronted with her at that time. 4. The fact that they were not punished for making a false charge. 5. The fact (shown in Achilli's evidence) that he soon after found it convenient to leave Naples, and is immediately after that imprisoned. 6. The judgment of the Inquisition in 1842, reciting this very offence. The reader will remark how Achilli's counsel shrank from the greatest portion of the evidence.

cases; and I submit, gentlemen, that these two cases are disposed of!

Proceeding to Corfu, I now come to charge 14, in which it is asserted that Dr. Achilli committed adultery with the wives of Garamoni and Coriboni. Now anything short of the entire proof of these charges is entire failure of evidence, and I contend that that has been the case. No witnesses are brought by Dr. Achilli from Italy, for obvious reasons, but there are some from Corfu. Garamoni was brought over by the defendant, but afterwards Captain Lawrence came over; he was well known to Garamoni, and Garamoni was well known to Captain Lawrence; and as soon as the latter arrived in this country the former left, and could not be prevailed on to return. (Laughter.)<sup>f</sup> Coriboni and his wife have left the island, and could not be traced.

In the case of Garamoni the defendant called two witnesses, Patrini and Russo; but the value of their evidence may be tested by these two facts, that Russo had not seen Dr. Achilli before the night in question, and Patrini only knew him by his "stature"! Then there is the documentary evidence as to the proceedings before the court, which were, however, compromised. What does the evidence in this case amount to? That Dr. Achilli is passing, and the wife calls him to ask him a question! On such evidence you are asked to convict Dr. Achilli of adultery with her! Gentlemen, I am sure you will not find him guilty on such slender grounds!

Next as to the case of the wife of Coriboni. It is said she was a chorus singer, and a person of bad repute, and that Dr. Achilli ought to have known it, as all Corfu did, and then it is imputed to him that he could only have engaged them from a bad motive. Yet it appears that Dr. Achilli lived in repute, and, as he says, he would have lost his character if this were known.<sup>g</sup> The charge rests chiefly on the testimony of Mr. Reynolds, who has been connected with the getting up of the defence. It is for you to say whether you believe his statements as to the conduct of Dr. Achilli, which, if they be true, must have shown unblushing effrontery in acting thus at an open window?<sup>h</sup> You will recollect that the house of Dr. Achilli was higher than Mr. Reynolds', and the distance was not above twenty feet between the two windows; and further, the room in which all this is alleged to have so openly occurred was the room in which Coriboni's wife was at her work, and where her husband would naturally come if he wanted to see her. There is another circumstance also: the young woman stated that her jealousy blinds were down to keep the sun out—and the sun would strike from

<sup>f</sup> Let the reader refer to Garamoni's affidavit (*ante*, Introduction), and he will appreciate the policy of the prosecution, and the candour of the advocate.

<sup>g</sup> He did not remain long at Corfu; and he states in his own book (which is part of the evidence against him), that he was in such "repute," that the very populace followed him about the streets.

<sup>h</sup> From which, however, Achilli swore he believed he could not be seen.

above—so that the jealousies would be so pulled that no one could look through them upwards,—which they must have done to see what was passing in the room in Dr. Achilli's house.<sup>i</sup> I do not impute perjury to that young woman, but she may have seen the familiarities, and Mr. Reynolds may have told her it was Dr. Achilli.<sup>j</sup> With reference to the testimony of Mr. Reynolds, Dr. Achilli stated distinctly that it was only after he had remonstrated with him for drunkenness that Mr. Reynolds remonstrated, and then not about these familiarities, nor about the Coribonis officiating in the chapel. Mr. Reynolds says this caused scandal; if so, should any of the congregation have been ignorant of the fact, and should we not have had some of them here? Dr. Achilli states distinctly that he never walked out with her, and if this were untrue he could be contradicted by some of the persons who must have seen him. At the same time he admits that when he met her near the house he may have walked home with her. If he had been seen walking with her, however (he added), his congregation would have left him, yet he states that the congregation had increased when he left the place.<sup>k</sup> And then, gentlemen, he went to the Protestant college of Malta: and I ask you, if he had been living in so profligate and scandalous a manner at Zante and Corfu, the infamy of it would not have travelled to Malta?<sup>l</sup> And if it were known in Malta, would the committee of the Protestant college have engaged him?<sup>m</sup> Surely this alone is an answer to all that Mr. Reynolds states with respect to what occurred at Zante or Corfu.

Well, gentlemen, Dr. Achilli is now come to Malta, professor of the Protestant college; and the plea of justification asserts that he was dismissed, not only for hindering an investigation concerning charges of immorality against others, but also on account of being implicated in these charges, and on account of the former offences charged against himself. Now, as respects the immorality charged against Leoniui and Saccares, Dr. Achilli says he was in London at the time; and a conversation with Dr. Bonavia is relied upon, in which Dr. Achilli is represented to have said that the witness was

<sup>i</sup> And could not the jealousies be turned upwards? This argument, ingenious but frivolous, shows how hard pressed Achilli's counsel were for topics to speak upon.

<sup>j</sup> And would not this be perjury? To swear positively she saw a person whom she did not see? Would seeing some man be seeing Achilli? The absurdity of the argument shows how hard up the Attorney General was for some way of getting rid of her evidence, and how he shrunk from imputing perjury to her.

<sup>k</sup> Contradicted by two respectable witnesses, one saying the matter made a great stir, and the other that the congregation declined.

<sup>l</sup> It would take some little time to follow him there; but when he is there, it is in evidence (in his book), that the papers exhorted the people to pelt him with offensive missiles, and that he was stigmatized as an impostor and a hypocrite.

<sup>m</sup> They of course did not know it at the time they engaged him; but did they at the time they dismissed him? And how long was that afterwards? A few months. What was it for? In his own affidavit (Introduction, *ante*) he discloses that they had heard unpleasant stories of his past life.



too scrupulous about such things, and would do worse if he were a bachelor; but Dr. Achilli said he did not believe the charges; and is it because in an angry conversation he says such words he is to be presumed guilty of them himself? And in common justice, the authorities of the college must be presumed to have given the true reasons of his dismissal in their minutes and resolutions on the subject.

Lord CAMPBELL.—It was on your objection I held that they could not be asked as to reasons not mentioned in those resolutions, or communicated to Dr. Achilli, but I now think that they might be asked that question, and I beg that Lord Shaftesbury may be sent for.

The Earl of Shaftesbury recalled and re-examined by Sir *A. Cockburn*.—What were the reasons for which Dr. Achilli was dismissed from the college at Malta? Lord CAMPBELL.—Were they ever discussed by the committee? Yes. Were they discussed? Yes. And communicated to Dr. Achilli? Oh yes. By letter? Yes. The *Attorney General*.—Have you the letter? Not with me; all the documents were in Court yesterday. Sir *A. Cockburn*.—They shall be sent for. The *Attorney General*.—I must have the letter, my lord. Sir *A. Cockburn*.—I will ask this question, then,—what were the matters discussed before the committee as the grounds of his dismissal? Certain charges were made against certain priests, and we charged Dr. Achilli to make an investigation. Lord CAMPBELL.—We have had all this before. Lord Shaftesbury.—My lord, I am not conversant with courts of justice, and can only answer the questions which are put to me; and if I am to be interrupted every moment I do not know how I can give evidence at all. This inquiry being pending, we received information that the principal witness, Saccares, is removed; and that the bishop of Gibraltar, as visitor of the college, declined to go on with the investigation. Lord CAMPBELL.—What we desire is, the other reasons, besides those reduced in writing, and communicated to Dr. Achilli. Sir *A. Cockburn*.—Were there any other reasons besides the fact of Dr. Achilli having sent away Saccares? Am I to be confined to facts or opinions? Lord CAMPBELL.—To facts. Sir *A. Cockburn*.—Whatever was discussed before the committee, and which in the general opinion of the committee operated to induce his dismissal. The *Attorney General*.—I cannot acquiesce in that. Lord CAMPBELL.—There is an allegation in the plea that there were other reasons which the committee could not get themselves to describe; other reasons besides those expressed in the resolutions. That is the question before us. Lord Shaftesbury.—The reasons that governed the committee were these. We felt that if the whole matter were to become public, so great a scandal would be brought upon the college, that we felt that for the sake of the institution itself,—for the sake of morality, and for the credit of the Protestant religion,—there was nothing left for us but to break up the concern, get rid of the whole transaction, and wash our hands of so foul a business. Sir *A. Cockburn*.—Were these specific charges brought under the consideration of the committee? I am speaking of general reasons, not of charges officially made before the committee.

The *Attorney General* continued his reply.—Gentlemen, I am glad this additional evidence has been given, for so far from esta-

blishing the truth of the plea, it has utterly failed, and the matter is set at rest, I hope, for ever.<sup>u</sup>

Gentlemen, I now pass to the sixteenth charge, respecting the English girls. Four servants in succession are mentioned (as well as another person of whom we have had no evidence), and in no one instance was any complaint made to Dr. Achilli or his wife! Upon this subject, I would observe, that the legislature have of late years taken into consideration the facility with which cases could be brought forward, and passed an Act requiring corroborative proof in support of the statement of the woman in cases of attempted affiliation. This, I think, is entitled to your serious consideration, in weighing the credit to be given to these witnesses. One of them admits she was accused by Mrs. Achilli of being dirty, which is a serious thing, you know, with a servant. In the case of Jane Legge, though expenses had been incurred, no application appears to have been made to Dr. Achilli on account of it; and if he were implicated, why should her sister, Mrs. Logan, be so angry at the idea of being summoned to give evidence against him? You need not be reminded of the character of Jane Legge, and the same remark applies to Sarah Wood. This witness says Dr. Achilli gave her a religious book. Why was it not produced?<sup>o</sup> It would have been at least a confirmation to her story.<sup>p</sup> Then, as to the case of Catherine Gorman, no indecency is alleged; and if it had occurred, is it likely that if she had made charge against him he would have continued at the lodging-house? It is clear on what principle these charges have been got up. "Get the servants of every house he has been in! If Catholics, all the better!"<sup>q</sup> Such are the sort of cases brought forward against Dr. Achilli. Gentlemen, you have seen Mrs. Achilli; and after seeing her, and looking on these girls, for instance, Sarah Wood, I ask you, in your own judgment and experience of mankind, whether the mere comparison does not discredit their stories!

And, now, gentlemen, we come to the extraordinary document

<sup>u</sup> A fine specimen of forensic audacity of assertion. The earl had just stated that which distinctly proved the plea, viz., that there were matters the disclosing of which would cause such scandal, that in order to avoid it, they not only dismissed Achilli but destroyed the whole concern.

<sup>o</sup> Suppose Achilli had sworn he never saw it?

<sup>p</sup> How so? Even supposing him to have admitted it, what would the gift of such a book show? It was otherwise with the girl Principe, for he swore he never saw her; and the paper she produced had his writing on it; and he admitted he entered names of the members in the book sometimes. There the thing formed a link in a chain of evidence, to which Achilli's counsel took care not to advert. It cannot fail to be observed how the Attorney General avoided the most material points, and dwelt diffusely on the most frivolous.

<sup>q</sup> This infamous insinuation, that Catholics are to be assumed to be capable of perjury, only deprived of its effect, not of its atrocity, by the fact that Sir Frederic imputed perjury to every one who swore against his client. Charges so reckless and unscrupulous are of course contemptible, and recoil on the person capable of making them.

from the Holy Inquisition.<sup>r</sup> You will observe that the defendant relies on that document for proof of several of his charges, of which there has been no oral evidence, but which, he says, proved upon the confession to be found in this document. I quite agree in the propriety of the course his lordship has adopted of admitting this document, as he expressed it, *valeat quantum*. His lordship held that as there was an allegation in the plea, that Dr. Achilli was found guilty by the Court of Inquisition, and certain punishment awarded, in support of that allegation, the document professing to come from the Court of Inquisition, was evidence to show that there was such a judgment; but, observe, not evidence to establish any of the facts contained in the judgment.<sup>s</sup> And here I must call your attention to the terms of this extraordinary document. It is the first time that a judgment of the Court of Inquisition has been produced in evidence in an English court of justice, and I hope it will be the last! I think probably it will be, after the fate which awaits this judgment, now before us.<sup>t</sup> You will see that in 1851 Mr. Harting went to Rome, and there is put in communication with certain authorities there. Now mark, there could be no harm in getting a judgment of the Court of Inquisition. There is nothing discreditable in it; but, somehow or other, Mr. Harting was unwilling publicly to announce the name of the individual who exerted himself to get a copy of the judgment; and now it turned out that it was Monsignore Talbot, private secretary of the pope.<sup>u</sup> And I suppose he thought the interference of Monsignore Talbot was a matter which would not bear the light, that it was something which would turn to the prejudice of the defendant's case—or otherwise he would at once have communicated, without any hesitation, the name of the individual.<sup>v</sup> He goes, through the instrumentality of Monsignore Talbot, to the office of the Inquisition, where he obtains the document. How does he obtain it? Let us see how these matters are “authenticated,” and the credit we may attach to their “authentication.”<sup>w</sup> And observe, so secret are their proceedings, that even a gentleman who is now a bishop of the Church, going to the office for papers, was not allowed to enter, but was kept at the door—the clerk, or notary, or other official person, coming out to deliver to him the papers.<sup>x</sup> There has been, therefore, no examina-

<sup>r</sup> The Attorney General reserved this, as a *bonne bouche* for the jury, to the last, and gave it them just after exciting their disgust about poor Sarah Wood. There was certainly consummate art in his address.

<sup>s</sup> Did it not prove the whole of the judgment? If so, the confession it recited was proved too, for it was part of the judgment.—See Notes to the judgment.

<sup>t</sup> In an ordinary case a counsel would not dare so to assume the decision of the jury. This is one of the many symptoms of the “foregone conclusion.”

<sup>u</sup> What evidence was there of that? And if it were so, what shadow of reason would it give for so foul an insinuation as follows?

<sup>v</sup> This is truly ridiculous. There may be private reasons for not mentioning names, and Achilli himself had declined to do so.

<sup>w</sup> Sir Frederic found full scope for his sneering here.

<sup>x</sup> To prevent scandal transpiring from disclosure of any of the charges.

tion of the copy with the original,<sup>y</sup> and no opportunity of investigation as to whether any original exists at all.<sup>z</sup> We are left entirely to uncertainty or conjecture. The notary, I suppose, delivered out to Mr. Harting the paper in question; and whether that paper be the representative of any other which previously existed, or whether it were then created for the first time,<sup>a</sup> we are wholly unable to suggest.<sup>b</sup> Now you will remember that Dr. Achilli says, though he may possibly have thrown himself upon the mercy of the Court, he never was charged with the offences set forth in the judgment, but the accusation was confined to heresy; whereas this document states, that he having been examined by judicial functionaries, confessed himself guilty of immorality. You will observe that this document was obtained in September, 1851, and the pleas were filed in February this year; so that first this document is procured, in which this is inserted, which is to be used as the confession of Dr. Achilli; then in this document are found the different charges contained in the pleas; and then, lastly, the proof of the pleas is referred back to the judgment!<sup>c</sup> And observe, the judgment states that he is "to be imprisoned in one of the houses of his order," though, in 1839, he had completed his secularization, and was a monk of no order at all. That, no doubt, is not conclusive, but it surely is a circumstance worthy of consideration in connection with the other facts which are stated in the judgment, and with the reliance which we can place upon those facts. His lordship has said that this document is not evidence of the facts it sets forth, and rather intimated that if he had more narrowly examined it, he might not have admitted it at all.

Lord CAMPBELL.—I said it was evidenced that a sentence was pronounced, not of the facts it recited, and which are simply stated by the notary as the result of his examination.<sup>d</sup> I think I must take it as evidence of such a sentence having been pronounced!

The *Attorney General*.—Gentlemen, considering the course which

<sup>y</sup> The authentication or exemplification of a copy by a court is of more force than that of any private person.—See *Gilbert on Evidence*, cited *ante* (Notes on judgment).

<sup>z</sup> If there were forgery, what could be the value of any examination by the witness?

<sup>a</sup> Is not the suggestion of forgery, as it is without the semblance of a reason, unscrupulous? and was it not utterly unjustifiable in law?—See Notes on judgment, *ante*.

<sup>b</sup> Then why suggest so shocking an insinuation?

<sup>c</sup> If this do not imply that there was a conspiracy, forgery, and perjury, it was nonsense; and any one who heard Sir Fredric, could not question the meaning he wished to convey to the jury.

<sup>d</sup> For this monstrous misrepresentation, there not only is not the slightest pretence, but it is utterly in opposition to the whole tenor of the document, which speaks of their eminences' examination, not of the notary. The officer only certifies that their eminences had considered and adjudged; and the Secretary of State certifies that there is such a court with such a jurisdiction, and with such an officer, and with such a seal.

Dr. Achilli had pursued up to 1841, in gradually breaking off from the Roman Catholic Church, I don't think I am interested in contending that the Holy Inquisition did not pronounce this sentence against him.<sup>e</sup> But, as to the other matters the document sets forth, I maintain that it is a scandalous fabrication!<sup>f</sup> and that there is not a pretence for any of these charges, of which this is to be made the foundation.

Gentlemen, with confidence I say, that on all the other matters Dr. Achilli is absolved and acquitted; and he now stands before you, ready to receive your verdict, anticipating, with entire confidence, that the verdict will be one which will clear his character, and vindicate him from the foul slanders which Dr. Newman has thought proper to promulgate against him, and pronounce a condemnation upon Dr. Newman, upon which he may be answerable to the law.

Gentlemen, I have now gone through,—with anxiety, with the deepest interest, and with a consciousness of my own inability to do justice to the case,—the various matters in this case, but with a firm confidence in your deliberate judgment, which, I trust, will be found justified by the result of the case. I appeal to you, whether I have, in any way, endeavoured to excite any prejudice;<sup>g</sup> whether I have not endeavoured to detach this anxious and painful inquiry from all those religious considerations<sup>h</sup> in which it has been said to be involved.

Gentlemen, I have represented to you the cause of a man, who, under unprecedented and unparalleled difficulties, has, I may say, been called before you (because it was impossible for him not to challenge his accuser to substantiate the truth of his statements in a court of justice) to answer for a considerable period of his life, on charges of a most serious description, and which necessarily, from their nature, are complicated with one another. I have endeavoured to disentangle them from the complexity in which they are involved. I have been anxious that your duty should be discharged in the way my lord desires, by a specific application of your minds to each distinct particular charge in succession. And, notwithstanding the formidable character of my task, I trust that, at all events, I have

<sup>e</sup> Here for once the Attorney General forgot. He forgot his client had sworn that he never was sentenced to deprivation at all. See his affidavit and his evidence!

<sup>f</sup> There can be no doubt, now, as to the Attorney General's intention to make these shocking and unscrupulous suggestions of criminality in some of the most venerable and virtuous men in Europe, whom even Lord Campbell was compelled to say were men of "learning and piety." Did the Attorney General believe what he suggested? If not, is this the morality of the English bar, of which he is *ex officio* the leader?

<sup>g</sup> The audacity of this is almost amusing, just after imputing a conspiracy to suborn perjury to the heads of the Catholic Church, and after insinuating that Catholics were by reason of their religion peculiarly addicted to perjury.

<sup>h</sup> See his previous references to "auricular confession" and "transubstantiation."

performed my duty fairly; that I have not confused any statements which have been made on the part of the witnesses, or misrepresented any single fact which has been proved in evidence before you. I am sure, the more this case is sifted the better will it be for Dr. Achilli; the more light that can be thrown upon it, the more the truth will appear; and I am desirous that no part of it should escape from your most minute and careful examination. It is a perilous issue which awaits him, and I rejoice, with confidence, in the force of truth, in the circumstances by which he is enabled to show it, and I trust this case to your impartial determination.

The LORD CHIEF JUSTICE.—Gentlemen of the jury, I am sure you will devote your earnest attention to this case, and consider it with the utmost impartiality. Gentlemen, some apprehension has been expressed that you might be biassed by difference of religion. Of that I sincerely believe there is not the remotest chance!<sup>i</sup> even if you were all Protestants. Even had the credit of the Protestant religion been at stake, I am sure you would give a verdict founded upon the evidence before you. But I cannot see how it can be said that in this case the credit of the Protestant religion is at all involved. The character of Dr. Achilli is at stake in the deepest manner; but the charges which are imputed to him took place when he was still of the Roman Catholic religion,<sup>j</sup> and I cannot see how it could affect the Protestant faith that there should have been a Roman Catholic priest, who pretended to come over to the Protestant persuasion, and who deserves no credit for his professions. Then, as to Dr. Newman, there is no danger of his being looked upon by you unfavourably, though he has left the Protestant religion, and is now of the Church of Rome. Gentlemen, no doubt he has acted from the purest motives, and I give him credit for the course he has adopted. What I dislike to see is, clergymen (if there be any such) remaining in the Protestant Church, who, while they are Roman Catholics in heart, and wish to be so in their practice, remain in the Protestant Church;<sup>k</sup> but when a man of piety, honour, and education<sup>l</sup> (like Dr. Newman), feels that he does not belong to the Church of England, and resigns his position in that

<sup>i</sup> The first thing the judge does is to try and destroy all the effect of the powerful appeal made to them by the defendant's counsel, to discard prejudice, by assuring them that there was not the least danger of any prejudice. Acting on that assurance, they would of course make no effort to discard it, nor feel the least distrust of their predispositions.

<sup>j</sup> The jury would not be so blind as not to see that Achilli had been rather a Protestant ever since 1829, at least; and he says so in substance himself.

<sup>k</sup> No allusion to the admission of Achilli, that he had for so many years retained the emoluments of a Church he believed an imposture. Yet did not this go to his credit?

<sup>l</sup> The jury had read Lord Campbell's insinuations of the possibility of a conspiracy to suborn perjury. The next sentence actually assumes the whole question not only of Dr. Newman's legal but moral guilt.

Church, and all the advantages arising from it, there is no reason to cast any imputation upon him.

Gentlemen, I, however, must say that Dr. Newman, in attacking Dr. Achilli as he has done, has acted rashly and recklessly, even though he might well believe in the truth of what he said.<sup>m</sup> He has asserted a number of things of which he could have no personal knowledge, and as to which he might be mistaken. At this juncture, I must do him the justice to say, that when an application was made for this rule, he acted with perfect propriety, and at once stepped forward.

This being a criminal information, filed by the authority of this Court, I may explain, all that the Court says by permitting it to issue is, that there are reasonable grounds for bringing the case before a jury.

Gentlemen, as to the libel, there seems to be no doubt that the statements made by Dr. Newman affecting Dr. Achilli amount to a libel, for it contains imputations on the character of Dr. Achilli; and there is nothing in the occasion of making these charges which would exempt Dr. Newman from the responsibility which ordinarily attaches to any one who makes such charges.<sup>n</sup>

Gentlemen, two pleas have been placed upon record,—the first is “Not guilty;” and there can be no doubt that your verdict upon that plea must be for the prosecutor, because Dr. Newman admits the publication; and it will be for you to say whether this is a libel, *i. e.*, containing criminatory charges against the prosecutor.

Formerly that would have been the only question to determine; but now the law is altered; and those who were charged with libel have an opportunity of alleging in justification that they have stated the truth, and were actuated by laudable motives. I am happy to believe that this is a great improvement in our jurisprudence, for it has taken away the reproach embodied in the saying, “The greater the truth the greater the libel.” Now if the truth be established there can be no blame, but rather commendation for speaking the truth.

There is, therefore, a plea of justification on the record; and it will be for you to say, on the evidence before you, whether the various imputations justified in the second plea by Dr. Newman have been established. As to some of those imputations, hardly any

<sup>m</sup> Was not this a rash and reckless assertion in a judge, who had it in evidence that a year and a half before Dr. Newman published his lecture, Cardinal Wiseman (as Achilli knew) had published a circumstantial statement of every one of the charges (citing official documents), and that this had not been legally answered; and who, moreover, had heard witnesses depose to some of the charges as having come before public courts: and had in evidence a judgment of the Inquisition, reciting Achilli's confession, which also is referred to by the Cardinal, and had doubtless been seen by him, and probably by Dr. Newman? Was it not *unjust*, after such evidence, for the judge to tell the jury the defendant had no fair foundation for making his charges? Must not this have biassed the jury?

<sup>n</sup> *Sed quære*.—See the Introduction.

proof has been adduced, while upon others most serious evidence has been offered; and it will be for you to say whether you believe that evidence, and whether you consider the allegations established. You will be furnished with a copy of the twenty-three charges; and I shall ask you whether all or any, and if any, which of them, be in your opinion proved.

Gentlemen, you can hardly recollect all the evidence which has been adduced in support of some of the most material of these charges; and I should not be satisfied to leave you to come to a conclusion without reading over to you the whole of the evidence, with a few observations which may suggest themselves to me, merely for your assistance, advising you to form your own opinion, and not in the slightest degree to be influenced by anything I say, except so far as you may concur in them. I think that, after the eloquent speeches we have heard, and which have done the highest credit to the English bar,<sup>o</sup> you cannot come to a calm and satisfactory conclusion without hearing the evidence again.

Now there is no direct evidence respecting the five first charges,<sup>p</sup> as to his being deprived of his faculty to lecture, &c.; and the evidence begins with the sixth charge, relating to Elena Valente. If you believe her evidence, that charge is substantiated. But, at the same time, there are improbabilities in her story,<sup>q</sup> and, so far as I observe, it is unconfirmed.<sup>r</sup> If you believe her, however,<sup>s</sup> her evidence is sufficient. (Here the learned judge read his notes of her evidence; and when he read the sentence, "I saw the curate," he observed)—You must not be swayed by these peculiarities in a Catholic country; she might very innocently see her curate before she came. (After reading the answer as to not telling any one, he observed)—This is a remarkable thing! She made no complaint to her parents!<sup>t</sup> (After concluding the evidence, laying emphatic stress on the words "The curate told me it was for the glory of God and the honour of mother Church," he said, shaking his head most incredulously)—Gentlemen, these are extraordinary circumstances! but you must decide! The next witness called does

<sup>o</sup> Including the Attorney General's unscrupulous imputations, of course.

<sup>p</sup> Let the reader refer to the evidence, and judge how far this is so.

<sup>q</sup> What were they? The learned judge could point out none. He shook his head, however, so solemnly and gravely, that he implied the most utter unworthiness of credit. It is not only what he said, though that, it is conceived, was enough to destroy any chance of a fair trial, even with a fair jury, but the way in which he said it.

<sup>r</sup> She was confirmed by Achilli himself in his cross-examination, to which Lord Campbell does not refer.

<sup>s</sup> Another shake of the head.

<sup>t</sup> Did Lord Campbell ever hear of a girl seduced complaining to her parents? Would anything but a sense of religious obligation, and the belief in the sacrament of penance, ever induce her to reveal her shame to any one? Would not her parents be precisely the last persons she would wish to know of it?



not confirm her, nor do I find any confirmation of her evidence! <sup>u</sup>

The next witness is the Rev. Mr. Giotti, who says (reading his evidence), "I saw Rosa di Alessandris, and told her to come, but she would not." Gentlemen, this deserves consideration! No doubt the means were afforded her to come. <sup>v</sup>

This, then, is all the evidence relating to Elena Valente, and there is nothing in corroboration of her own evidence! <sup>w</sup>

Then we come to the next witness, and to the most serious case of all, that of Maria Principe, which deserves your most careful consideration. It is clear that this is no recent invention, <sup>x</sup> for many years ago this charge was brought against Dr. Achilli. It may have been unfounded, but it is not a new invention. So far as Elena Valente is concerned, there is nothing to show that it might not now be brought against him for the first time; but as to Maria Principe, it is clear that complaints were made soon after the time at which the outrage is supposed to have been committed. <sup>y</sup> She says (reading her evidence), if you believe the mother, the complaint was made to her by the daughter, and that immediately Dr Achilli was charged with having seduced the girl. It is true he denies it, but the charge he admits was brought against him immediately. This is certainly evidence for your consideration, as supporting the statements of the girl. <sup>z</sup> Dr. Achilli says, he never applied to the police, but his friends did, and it is evident there had been some scandal about it. <sup>a</sup>

<sup>u</sup> Here again wholly omitting to call attention to the cross-examination of Achilli, who, after swearing he never saw her, and never was at the house of a Madame Gentili, where she said she was at the time, confessed he had been at the house, and at the very time.

<sup>v</sup> It is hardly credible that Lord Campbell should have forgotten the fact, stated that she was ill, and in the family-way, and could not come. Yet his manner implied that she would not come because she could not prove the charge respecting herself.

<sup>w</sup> See the previous note as to this most monstrous mis-statement.

<sup>x</sup> Implying that others were, or might be. Is that a usual course for a judge, without the least evidence, to assume and suggest that sworn evidence may be false?

<sup>y</sup> And Achilli left Naples just after the time the girl was delivered!

<sup>z</sup> This is the fairest, the only fair portion of the charge, so far as the evidence is concerned; and it serves as a contrast to show the unfairness of the rest. Why did not Lord Campbell at least allude to Achilli's cross-examination as to Valente, as he did with respect to Principe. In this case, however, it is only an allusion, and a very indistinct one. He does not notice the paper the girl produced. The circumstance that he used to make entries in the books about the members of the confraternity, the extraordinary fact that he swore that he never asked to see the girl who made such a charge, and other confirmations. He could call the evidence of Valente—simple, straightforward, and natural—"extraordinary," and shake his head at it; but did not say "extraordinary!" and shake his head at the marvellous assertions of Achilli.

<sup>a</sup> Here he omits to mention Achilli's departure from Naples just after—one of the most pregnant and important facts of the trial; and on which the whole case as to the judgment of the Inquisition very much turns.

Gentlemen, we now come to the Corfu case; and here I think the evidence is not at all satisfactory.<sup>b</sup> (He read the evidence as to the Garamonis.) I think the evidence, to show the adultery, is not at all satisfactory! Then there is the case of the Coribonis. (He read the evidence, remarking on that of Mr. Reynolds.) Gentlemen, this is a very extraordinary story! He reports that Dr. Achilli was living in adultery with this woman; and that still in the day time he could see them toying in this familiar manner! It is for you to consider the probability of this!<sup>c</sup> It is extraordinary that Dr. Achilli should have committed these indecencies at an open window!<sup>d</sup> It must be observed that Mr. Reynolds certainly has been active in getting up the case;<sup>e</sup> and the letter he wrote to Lieutenant Stoney is worthy of being attended to, where he says, "they are disposed to be very liberal!"<sup>f</sup> You saw the way in which Mr. Reynolds gave his evidence, and it is for you to say what credit you attach to it.<sup>g</sup>

Gentlemen, we now come to the charge as to Malta, which is, in substance, that Dr. Achilli sent away Saccares to prevent inquiry respecting his misconduct and immorality. No doubt he sent him away; it is for you to say whether it was from improper motives. (His lordship read the evidence.) Gentlemen, I do not think that the evidence makes out the charge that Dr. Achilli was dismissed on the ground of immorality, or complicity in immorality. With respect to the conversation spoken of by Dr. Bonavia, no doubt it is very discreditable to Dr. Achilli if it ever occurred; but the witness never mentioned it to any one before he came over on this case.<sup>h</sup>

<sup>b</sup> Here is a downright destruction of a whole case, supported by the concurrent testimony of three witnesses, supported by documentary evidence, and confirmed not only by the prosecutor, but by the inconsistency between his statements and those of the wife, who was his witness!

<sup>c</sup> This seems somewhat of an extraordinary argument!

<sup>d</sup> How is it Lord Campbell omitted to mention that Achilli swore to his belief that he could not be seen from that window!

<sup>e</sup> An utter assumption—nay, a perfect perversion of the evidence! Mr. Reynolds had simply seen the case in the newspapers, as an honest man communicated what he knew, and wrote to Stoney to tell what he knew; took some subpoenas in his pocket to a witness who lived near his destination; and one morning, as he spoke Italian, came down with the Italian witnesses! These are good grounds for a judge to discredit a gentleman of twenty-five years' standing in a government office, whose evidence was confirmed by a young lady of unimpeachable character, and indirectly confirmed by other evidence.

<sup>f</sup> It will scarcely be credited, but is the fact, that Lord Campbell, while adopting thus the dark suggestions of Achilli's counsel, as to bribing of evidence, said not a syllable as to the explanation, and the disclosure that Stoney had refused to come unless his full expenses were paid, which any witness has a right to require! This part of the charge is especially submitted to the consideration of all who care for justice.

<sup>g</sup> Scroggs did not bully any witness more than Lord Campbell did Mr. Reynolds, nor discredit any more recklessly than he did Dr. Bonavia.

<sup>h</sup> Why should he?—See note to his evidence.

Gentlemen, as to the evidence of Harris, and the other female servants, if you believe it, it shows great immorality; it is for you to say whether you believe it. (He read the evidence.) As to Sarah Wood, it is remarkable she should have concealed it so long, and disclosed it to no one! still, it may be true.

Gentlemen, I need not read the evidence of Mr. Harting, which I thought made the judgment of the Court of Inquisition admissible, as it was only for my information. Dr. Grant's evidence, also, is immaterial, except as to the Court having jurisdiction over serious moral offences. He is a most respectable witness, and says it has such jurisdiction. The judgment comes in the name of the notary.<sup>i</sup> We generally have the proceedings of the judges to speak for themselves. Here you have the notary of the Inquisition, who says he has inspected certain documents; and then he gives us his own result from his examination, so that the early part of it is rather in the nature of a deposition or examination, than of a judgment.<sup>j</sup> But then afterwards come words which distinctly amount to a decree of the Court, because it is contained in these words: "Their eminences the Inquisitors-General decreed," &c.<sup>k</sup> Now, gentlemen, I think that is not only admissible evidence, but very strong evidence, to prove that such a sentence was pronounced. Because, the Court of Inquisition, no doubt, is a regular tribunal in the Roman States, and is presided over by men of learning and piety. They knew that this document was to be used in a court of justice in England; and I cannot suppose for a moment that they would wish to impose upon us.<sup>l</sup> It is a supposition that we cannot entertain. We cannot come to the conclusion that there has been such a fabrication.<sup>m</sup> That such a judgment was pronounced, I, for one, have no doubt. But, then, for what cause it was pronounced is a different thing. We should rather suppose it was heresy! Dr. Achilli says it was, and that no charge of immorality was brought up against him. It is for you to say whether, looking at the whole document, you believe it was heresy or immorality. It purports to recite a confession of Dr. Achilli; but that he denies.

<sup>i</sup> They are always in this, and in every other country, certified by an officer. Judges never draw up judgments, still less take copies.

<sup>j</sup> It states that depositions had been taken, and that Achilli had been examined by the established authorities.

<sup>k</sup> This really is a flagrant misrepresentation. The document runs thus:—"After having weighed and considered, &c., and accepted the confession of the accused (so recited), their reverences decree." It is all one sentence, which Lord Campbell cut in two! It is as though it had been written, "Their eminences having weighed and considered, &c., and accepted the confession set forth, decree," &c.

<sup>l</sup> Then why did Lord Campbell permit the jury to believe that the reasons which these eminent men certified in their judgment (one of them setting his seal to the copy), were not the reasons of the judgment?

<sup>m</sup> But he leaves them at liberty to assume the material part of it to have been fabricated!

Mr. *Badeley*.—I beg to call your lordship's attention to this, that the nineteenth charge does not allege for what cause the judgment was pronounced, but only that he was by the court suspended and disabled.

Lord CAMPBELL.—As I have already observed, I think that allegation is sustained by the judgment produced. Gentlemen, I now come to the examination of Dr. Achilli; and I will repeat what I said at the opening of the case, that the more natural course was, that the accuser, who is prosecuted, should first come forward and make out his charges, before the prosecutor appears for examination.<sup>n</sup> (His Lordship read his notes of the examination, observing on it as he went along.) It is proved that the charge as to Garamoni's wife "came before the court," but not on the merits of the case; and there is no proof that Dr. Achilli was guilty.

Mr. *Badeley*.—My Lord, the twenty-second charge states simply that the name of Dr. Achilli came before the court on the charge.

Lord CAMPBELL.—No doubt that allegation is supported,<sup>o</sup> but there is no proof of the guilt of Dr. Achilli.

Mr. *Badeley*.—That is not alleged, my Lord, in this charge.

Lord CAMPBELL continued his reading of the prosecutor's evidence, and his comments. Gentlemen, there was an insinuation that Dr. Achilli, as he had made a vow of celibacy, that it was discreditable that he should have entered the holy estate of matrimony. We must remember, however, that Luther married, and married a nun!<sup>p</sup> With regard to the Inquisition, Dr. Achilli stated that it is not a court competent to adjudicate on questions of immorality. But there he must be mistaken; for Dr. Grant, who is a canonist, well acquainted with the courts, says it has jurisdiction over immorality. It should seem certainly more probable that it should be heresy!<sup>q</sup>

Gentlemen, Dr. Achilli was cross-examined with great severity; and it was proper that he should be so. In the course of his cross-examination, he was asked certain questions which he declined to answer.<sup>r</sup> Now, that is pregnant matter for your consideration.

<sup>n</sup> On a criminal information, the object of which is to clear character? Then, how is it the Court has always required the prosecutor to enter fully into the case on affidavit, and deny, and as far as he can, disprove, the charges, before even a rule nisi is issued?

<sup>o</sup> It would be curious to know how the jury reconciled it to their consciences to find this issue against Dr. Newman. The document was produced (see *ante*), with Achilli's name in it, in connection with the charge! This may serve as a specimen of the conscientiousness of a "British jury," and the moral value of this verdict. It was in flagrant defiance of the facts!

<sup>p</sup> Which the Lord Chief Justice clearly thought one of his main merits.

<sup>q</sup> Here is a British judge putting his own misinformed notions, and encouraging the jury to put theirs, in opposition to sworn evidence!

<sup>r</sup> When Fenwick, on his trial, asked Titus Oates if he had not forsworn himself, by declaring that he came over to England with Hilsley, Scroggs interposed, and decided that could not be urged, as Oates had not been convicted of

From his declining to answer, one may not unfairly suppose that in some cases he had erred in point of chastity,<sup>s</sup> and that may afford some ground for presuming that he might have done so in other cases. I must, however, point out for your consideration, that so far as his credit goes, this is rather in confirmation of it, for it would have been easy to say no; and he declines to do so. You will consider whether this does not raise him in your estimation as regards his credibility as a witness.<sup>t</sup> Gentlemen, I have now gone through the whole of the evidence, and leave the case in your hands.<sup>u</sup>

His lordship then directed the jury to be furnished with an abstract of the plea of justification, and asked them to say whether they found any of the allegations proved, and, if so, which of them? He had done his duty in the case, and he was sure that they would do theirs.

The jury then (at about about half-past eight) retired. They did not return into court until eleven o'clock.

On their return it was asked, "Are you agreed on your verdict?"

The Foreman.—Yes; on the nineteenth charge we find proved. All the rest we find not proved. (Sensation and partial cheering.)

Lord CAMPBELL.—The nineteenth charge respects Dr. Achilli's being deprived of his professorship and prohibited from preaching and hearing confession. You find that to be proved?

The Foreman.—Yes, my Lord, proved.

Lord CAMPBELL.—And you find none of the other allegations proved?

The Foreman and several of the Jurors.—No, none of the others. (Here some of the people in the court,<sup>v</sup> beginning to understand the verdict, burst out into a vigorous cheer, which no one attempted to suppress.)

Lord CAMPBELL.—With regard, then, to the plea of not guilty. The first plea is not guilty. You see that involves the publication, and the question whether it was of a libellous nature.

perjury. The decision Lord Campbell gave as to the questions put to Achilli, is precisely a parallel, and was by no means the worst he gave.

<sup>s</sup> Rather a mild way of putting it! The man was asked at every place of residence if he could deny having committed criminal acts; and he was a priest and a monk! But that probably made them meritorious in the eyes of Lord Campbell and a common jury.

<sup>t</sup> Not in the least. As he could not truly deny the charges he would be deterred by dread of indictment for perjury. The eagerness with which Lord Campbell laid hold of this fallacious argument to uphold Achilli's credit, strikingly shows what an overwhelming influence was at work in his mind. It never occurred to him to observe what a confirmation there was of the credit of the other witnesses against Achilli. Nay, he had declared their evidence unconfirmed, or "extraordinary."

<sup>u</sup> The best comment, after all, on this "charge," is a remark of a barrister who heard it:—"Another reply on the part of the prosecution!"

<sup>v</sup> Most of them of the coarser sort: the better portion of the audience had long left, well knowing what the verdict would be, and too disgusted to wait for it.

A Juror.—Not guilty. That's what we find.

Lord CAMPBELL.—No, understand me. The first plea is not guilty; and that involves the question whether it is proved that the defendant published this alleged libel, and whether it be libellous. Do not mind the truth of the charges at all. As to this, say only on that do you find him guilty; and that it was of a libellous nature?

The Foreman.—Yes, guilty.

Lord CAMPBELL.—On that you find him guilty. There is then a verdict for the Crown on that. Then we come to the justification; and on the justification you find that the only part of it which is proved is the nineteenth, respecting Dr. Achilli being deprived of his professorship, and prohibited from preaching, and from hearing confession.

A Juror.—Yes, that is the verdict.

Lord CAMPBELL.—Wait a moment; and let me see. That is (after a pause), you find that that is true which is alleged in the decree of the Inquisition, as far as that decree goes?

A Juror.—Yes.

Lord CAMPBELL.—So far as that decree goes. You don't find as to the reasons for the decree, but as to the decree itself?

The Foreman.—Yes, only that.

Lord CAMPBELL.—Very well. Then you find it to be true that Dr. Achilli was suspended from the celebration of mass, prohibited from any cure of souls, and from preaching, and from hearing confession, and from exercising his sacerdotal office in any way, according to the decree of the Inquisition. And all the rest you find not to be proved?

The Foreman.—Not to our satisfaction.\*

Lord CAMPBELL.—Very well. Then on the justification I direct a verdict to be entered for the Crown, on that issue as well as on the plea of not guilty; and that special finding I, of course, will report to the Court when necessary. (Here again a loud cheer was given by the thronged court.) I now discharge you, gentlemen, from your attendance, and beg to thank you. (Renewed cheers.)

A Juror.—I beg your Lordship to understand that we did not consider this case as regards Protestantism and Catholicism. We only looked at it as a matter of fact.

Lord CAMPBELL.—Oh, I am sure you have dealt with it conscientiously.<sup>x</sup>

\* The writer is informed, that one of the jurors, being asked how he came to give such a verdict, said, "Oh, we believed him guilty, but we were not satisfied." What this meant may be inferred from the answer of another—"that they were afraid of the consequences." Such is trial by jury! And with such tribunals in this country, Lord Campbell thanks God we have no Court of Inquisition! composed of ecclesiastics, whom he acknowledged as eminent for "learning and piety." Perhaps the people of Italy may thank God they have not such judges and juries!

<sup>x</sup> Scroggs, at the trial of Coleman, said to the jury—"You have acted like very

Another hearty cheer was now given, which the learned judge did not for a moment attempt to check.

Some conversation took place between his lordship, the jury,<sup>y</sup> and the learned counsel, respecting the fees to be paid to the jury. All parties agreed that it was a "hard case;" but his lordship said he had no power to grant anything like an indemnity, and, accordingly, only the customary nominal fee was paid to each jurymen. Immediately afterwards the assemblage dispersed.

good Christians, and very good subjects; that is, like very good Protestants." Those good Protestants gave verdicts which every one now regards as judicial murders; and the reader will judge whether the eulogy of Lord Chief Justice Campbell was worth more than that of Lord Chief Justice Scroggs. The *Spectator* says:—"It was a right Protestant jury. The public found it impossible to disbelieve all the mass of evidence in justification of the libel; but the jury laboured under no such judicial scruple. There is a way out of every difficulty; and the jury, ably instructed how to pick and choose what to see, think, and believe, proved apt pupils. They disclaimed all consideration of the question of Catholic or Protestant; but, if the case is not a beautiful example of honourable adhesion to the 'subauditum,' it is a still more perfect specimen of instinctive sympathy. They found that the nineteenth article against Achilli was proved—but, with a mental reservation which they were admirably assisted to develop, they accepted the evidence of the note from the Inquisition to prove that Achilli had been permanently suspended from his functions in the Romish Church; but they rejected the same evidence so far as it testified to the reasons of his suspension—the scandalous and notorious incontinence of his life." The case, however, is far stronger than is stated here. The Lord Chief Justice almost said they ought to find the charge as to Principe proved; and did say that one of the charges as to Garamoni's wife was proved. On these two serious charges, then, the verdict was even against the opinion of the judge. With respect to the cases of the women who came forward, the reader will judge whether the verdict was against the evidence. As to the other cases (especially those of women whose names were unknown), and also as to the charges of general immorality, infidelity, and irregularity, the reader will judge whether the verdict was against the prosecutor's own acknowledgments. They are particularly requested to remark that it is charged that he caused scandal by visiting private houses, and not frequenting choir, &c., and otherwise not observing the rules of a religious life, and to refer to the admissions in his own book, and his own evidence as to those and all the other charges.

<sup>y</sup> A special jury are entitled to a fee of one guinea. Most of the special jurors in this case, however, were really of the common jury class. They are called "merchants," because the special juries can only be taken from the names so designated (or as bankers or esquires) in the jury lists, which are made up by the churchwardens and overseers; and no mistake in the designation can be remedied, except on application of the party, or upon notice to him—a trouble no one is likely to take; so that, practically, all the ordinary sort of tradesmen are classed as "merchants."—See 6 Geo. IV. c. 50.

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## APPENDIX.

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The following extracts from the able articles in the *Times and Chronicle* are inserted, as showing public opinion upon the trial:—

“It is a great thing, no doubt, that in Protestant England the principle embodied in the national faith should triumph over its Roman Catholic adversaries; but it is a still greater thing that justice should be administered with purity and impartiality—that the landmarks of the law should not be transgressed—and that no feelings but those of the calmest and highest morality should sway the decisions, or intrude into the proceedings, of our courts. We cannot afford to buy controversial success at the price of our reputation for a calm and immaculate administration of justice, or to subvert the rules upon which testimony is received and estimated, to satisfy a predilection, or to appease an antipathy. Time was when, amid the cheers of a brutal multitude, on the faith of the impossible and self-contradictory evidence of Oates, Bedloe, and Dangerfield, English juries consigned innocent men to death, and received from the judge the shameful commendation that they had acted like good Protestants. Has the lapse of 170 years entirely removed us from those narrow prejudices and cruel partialities which in the days of the Popish plot poisoned the pure fountains of justice, and affixed an indelible stigma on the character of a nation not habitually unfair or inhuman? Will the opinion of the educated classes in this country, and of the great European community, ratify the verdict of a jury which absolved Dr. Achilli from every taint and stain, and seemed to aim at placing him on a higher pinnacle of moral purity than even he arrogated to himself.

“But thus much we say, that Dr. Newman undertook to prove certain acts of incontinence, and produced persons from a vast number of different places to speak to acts ranging over a long period of time, of which, if their statement was believed, they had the most complete knowledge. These witnesses did not break down, were not involved in any material contradiction, and stated nothing in which there was any strong antecedent improbability. Many of them made contemporary statements of the injuries they had received, and those statements and their consequent investigation were followed on more than one occasion by a change of residence on the part of Dr. Achilli. In one instance, that of the wife of Coriboni, two respectable witnesses proved that Dr. Achilli was seen in circumstances denoting undue familiarity with a person whom he chose to retain in his service after having been warned that she was a common prostitute, testimony which the Attorney General could find no other way of neutralizing than by suggesting that they had mistaken him for her husband in the broad daylight. Wherever he bent his steps, scandal, either justly or unjustly, seems to have followed him. The police at Naples, and the Inquisition at Rome, the Bishops' Court at Viterbo, and the Courts of Corfu—all seem to have had more or less to do with him, and all for the same



alleged propensity, and after a short residence in England we find a number of women ready to bring the same charges against him. Now stopped in a procession at Naples by a clamorous mother, now dogged at Corfu by a jealous tailor, now solemnly remonstrated with by members of his congregation on account of his maidservant, he is the most unfortunate of men if all these charges have been trumped up without substantial foundation. The charges can neither be ascribed to Roman Catholic nor Protestant malignity, for they began when he was of the one religion, and continued when he was of the other. Roman Catholics accused him while he was a Roman Catholic, and Protestants while he was a Protestant, and always of the same thing. He himself declines to attest his chastity by an oath, and thus seems to admit that if the prosecution succeeds it is because Dr. Newman has selected the wrong instances, not because he has charged an untrue offence. The sentence of the Inquisition, moreover, solemnly recites under respectable attestation his own confession and submission in Italian, and his conversation with Dr. Bonovia clearly shows how lightly he held the offence of which he was accused. Against these positive statements, these accumulative and corroborative probabilities, and these dangerous admissions, there is nothing to be set except the denial of Dr. Achilli, adhered to with steadiness and pertinacity under a long but not very skilful cross-examination—a denial which amounts to little more than a repetition of the affidavit upon which the criminal information was granted. If no amount of evidence could outweigh Dr. Achilli's denial on oath, the solemn proceedings of the trial were a hollow mockery; and if it could, it is difficult to conceive what testimony the jury could have expected. Many of the witnesses were poor; but it is among the poor that the profligates seek their victims. They could not be corroborated as to the fact, for that is a matter of secrecy; they were not discredited, they were not broken down, they were simply put aside and disbelieved. The principle upon which this case was decided would put an end to all proof by human testimony. If we are to require publicity in matters whose very essence is secrecy, virtue in witnesses the very nature of whose confession degrades them, and confessions by the accused of what even worldly influence binds them to deny, we may shut up our courts of justice, proclaim impunity for crime, or use ordeals and divinations as a substitute for the investigation we have rejected.

“If there is to be no presumption in favour of assertions attested by oath, no public writer can venture, should the public interest—as was admitted in the case of Dr. Newman by the prosecuting counsel—ever so imperiously require it, to make statements, however well founded, criminary of the character of another. Who can hope to be believed when such a mass of evidence has been flung aside as worthless? We consider that a great blow has been given to the administration of justice in this country, and Roman Catholics will have henceforth only too good reason for asserting, that there is no justice for them in cases tending to arouse the Protestant feelings of judges and juries.

“We wish we could conclude our observations on this case without saying anything calculated to imply a censure on the jury or the judge, under whose auspices they have, it seems to us, so signally miscarried. From the time when one of them objected to the exclusion of Dr. Achilli from the court, and another to the searching and reasonable question as to his general chastity, which he did not find it expedient to answer, till the faltering announcement, preceded and followed by unchecked ap-

plause, that the justification was not proved to their satisfaction, there is every reason to think that the case was not viewed by the jury with complete impartiality and absence of sectarian feeling.

"We have every respect for the high judicial character and attainments of Lord Campbell, and it is, therefore, with great regret we find him, in a case of so much delicacy and excitement, drawing attention to the Ecclesiastical Titles' Act, "thanking God" that "we have no Inquisition in this country;" and after he had been sufficiently applauded, renewing the remark that it might be applauded again, and assuring the audience with grotesque solemnity, that by admitting this document he did so without the slightest degree of danger to the Protestant religion of this country—a discovery which was received by the enthusiastic audience with a third round of cheers. We now take our leave of this painful subject, trusting we may not soon again be called upon to comment on proceedings so indecorous in their nature, so unsatisfactory in their result—so little calculated to increase the respect of the people for the administration of justice, or the estimation by foreign nations of the English name and character."—*Times*.

"No judicial proceeding has, for a long time past, excited so much interest as the present trial of the *Queen v. Newman*.

"It is but fair to admit that only an honest zeal and a deep conviction of the truth of his statements could have led Dr. Newman to originate so dangerous an inquiry. No one will suspect him of being a sharer in the conspiracy which, if we are to believe the verdict of the jury, must have been organized. He has proved that his opinion of the prosecutor's guilt was based on evidence abundantly convincing to his own mind; for, until the testimony of his witnesses was contradicted in detail, it must have commanded the belief of all except those who may be assumed to have suborned it. If the defendant should ever be called up to receive sentence, the Court of Queen's Bench will, no doubt, intimate, by its judgment, his entire innocence of any proceeding which could give the prosecutor a reasonable ground of complaint.

"It is greatly to be regretted that Lord Campbell should have been tempted to degrade his high position for the sake of an ill-timed and indecorous burst of applause.

"Various opinions were expressed in court respecting the prosecutor and the defendant; but all the instructed part of the audience was of one mind as to the conduct of the presiding judge. We make no complaint against Lord Campbell's summing up, nor against any legal decision which he pronounced.<sup>2</sup> In fact, the language which excited

<sup>2</sup> The following letter appeared in the *Chronicle* of the 28th of June:—"I turn to the article in your paper, for the purpose of correcting an error into which you seem to have fallen. You say, 'We make no complaint against Lord Campbell's summing up, nor against any legal decision which he pronounced.' Sir, I regret to say that very serious complaints are made both against the one and against the other. His summing up was extremely partial, as well as imperfect; for he made occasional observations upon portions of the evidence, as he read it, as if the circumstances were improbable, or unconfirmed, and carefully avoided all notice of the discrepancies between the testimony of Dr. Achilli himself and those very witnesses who were called to support him. No attempt was made to balance the conflicting statements—no observation offered upon the consistency of the story which each of the defendant's witnesses had given—no notice taken of the remarkable fact, that not one of those witnesses had been shaken upon cross-examination, or of the extreme improbability, not to say impossibility, that so many could have been suborned from so many different places, and under

universal reprobation was wholly immaterial to the issue. The vulgar obtuseness displayed in the feeble jest which was directed from the bench against a Roman Catholic bishop, forms the only excuse for the impropriety of a judge's addressing a political insult to a witness of dignified position.

such a variety of circumstances as well as characters, to perjure themselves without any assignable motive. Lord Campbell never called the attention of the jury to the important, the convincing fact, that all these oaths of all these various witnesses were only met in reality by the oath of Dr. Achilli himself; nor did he remind them of the far greater probability of perjury on the part of Dr. Achilli, who had so deep an interest at stake, than on that of all the witnesses against him, who had nothing to gain. His lordship asserted that the story of Elena Valente was uncorroborated, but he totally suppressed Dr. Achilli's prevarication respecting the family of Gentili, and the admissions which he had made confirmatory in some measure of Elena Valente's evidence. He never commented upon the secrecy with which such iniquities are usually committed, or upon the absolute impossibility which must often exist of adducing corroborative proofs, even in cases which have occurred recently, and in places close at hand, and much more in one the date of which was so distant, and the scene so far removed. With respect to the case of Garamoni, he wholly omitted to point out the extraordinary and palpable contradictions which there were between the statement made by Madame Garamoni and that of Dr. Achilli—contradictions so utterly irreconcilable that one or the other of these persons must necessarily have spoken falsely; and in adverting to the case of Coriboni and his wife, Lord Campbell took care to dwell upon the points which he thought calculated to discredit the testimony of Mr. Reynolds, but said as little as possible of the evidence of Madame Lavanchy, although her evidence was unimpeached, and was a plain and positive confirmation of that of Mr. Reynolds.

“ These, and many other observations, might be made upon Lord Campbell's summing up, which would justify the strongest complaints against it—as neither able nor impartial—calculated neither to assist the jury, if they had been anxious to ascertain the truth, nor to do justice between the parties, nor to save the witnesses from unjust and unreasonable imputations. As to his lordship's decision upon the legal points submitted to him, considerable doubt is felt as to the correctness of the view which he took of the judgment of the Court of Inquisition. He allowed that the document was properly authenticated, and admissible as legal evidence; he even stated that it would be absurd to suppose that the contents of that document had been fabricated, or that those who certified it were capable of misrepresentation; but yet he declined to take judicial notice of the first part of it, while he adopted the last, and treated the sentence as valid, without any regard either to the acts of profligacy on the part of Dr. Achilli, or to Dr. Achilli's own confession of those acts, upon which the sentence professed to be founded. But if this instrument was available in one part, why not in another? The whole of it rested upon the same authentication—each portion was vouched by the same authority—and if credit was to be given, by the comity of nations, to the act of the foreign court in passing such a sentence, why not to the grounds upon which they passed it, those grounds being plainly set forth, and there being direct evidence that the matters were within the jurisdiction of that tribunal? The law of England usually treats the judgment of a foreign court as conclusive upon the points upon which it professes to decide, when those points are proved to have been within the court's jurisdiction, and there is no palpable error or inconsistency upon the face of it. Dr. Achilli, indeed, had the hardihood to deny, not only that he was charged with such offences before the Inquisition, but even that they were within the jurisdiction of that court—a point upon which he received a direct contradiction from Bishop Grant, a witness whose character and whose testimony were alike unimpeachable. Dr. Achilli, however, went a little too far, for he swore positively that no such sentence had been pronounced against him, and that he had never been deprived of his sacerdotal

“A graver breach of propriety was committed when evidence was offered of the judgment pronounced on the prosecutor by the Inquisition. The document produced was a copy of the proceedings of that court, and the only dispute was as to its formal sufficiency—‘Thank God,’ was the remark which the Lord Chief Justice interposed at this point, ‘Thank God, we have not in this country a tribunal of Inquisition.’ Of course, the expected cheers of an ultra-Protestant audience greeted this irrelevant appeal to their prejudices.”—*Morning Chronicle*.

functions, although the very court which had sentenced him certified that he had, and if his oath was of so little value (as the jury themselves have told us) as to this latter statement, what is its worth as to the former? And as he had denied the wicked deeds with which he was charged by Dr. Newman, and which appeared to be, in parts at least, the same as those to which his confession related, why should that confession, which was set forth at length in the judgment, have been excluded from the jury, as a piece of evidence which they were not entitled to consider? The whole document ought to have been submitted to them, each part of it being connected with the other, and the whole being equally denied by the wholesale abnegations of Dr. Achilli. So much for Lord Campbell’s “legal decision;” and it may, I think, be gravely doubted whether in this respect he was not wrong in law. But whatever may be the legal value of this document in all its parts, of its moral value there can be no doubt, and no doubt Dr. Newman found in it a justification for exposing the conduct of this man, “the accuser of his brethren,” who comes forward, as his counsel tells us, only to vindicate his character from the charge of profligacy; and yet, when he is asked, in open court, respecting his immorality with other women than those whose names were specified in the pleadings, declines to answer the inconvenient question, and shelters himself under the protection of the Court? And this is the man who has been put forward as their champion by the Evangelical Alliance—who has been paraded upon platforms, and lauded in pamphlets—who is to be regarded as basely calumniated when assailed by Dr. Newman, but as the witness of undoubted truth when he publishes a book which treats with profane scoffing the most solemn ordinances of the religion of the great majority of the Christian world, and abuses with the most insolent ribaldry and the coarsest imputations, not only the pope himself, but all those also whom he found it convenient to attack.

“Sir, I regret to think that this trial will fix a lasting stain upon the annals of our judicial proceedings. It tells Roman Catholics that they must not hope for impartial justice from a Presbyterian judge or a Protestant jury; for I am sorry to say that not only was the judge thus unmindful of his dignity and his duty, but the jury showed, to all who observed their demeanour, the bias which from first to last they felt in favour of the prosecutor. Such, indeed, was the conduct of some of them, that, if reports are true, it was a subject of grave consideration with Dr. Newman’s counsel whether it might not become his duty to throw down his brief, and refuse to submit to the farce of arguing before men who seemed scarcely anxious to conceal their determination to decide against him. Happily, however, the evidence which was laid before them has been also laid before the public; and whatever advantage Dr. Achilli may fancy that he has gained by the verdict of these jurymen, he will find that, in the judgment of an impartial public, his single and interested oath will not outweigh the testimony of a host of disinterested witnesses, uncontradicted by anybody besides himself.

“I am, Sir, your most obedient Servant,

“ONE WHO WAS PRESENT AT THE TRIAL.”

THE

# CONFESSIONAL UNMASKED :

SHOWING

The Depravity of the Priesthood,

AND

## IMMORALITY OF THE CONFESSIONAL,

BEING THE

QUESTIONS PUT TO FEMALES IN CONFESSION,

ETC., ETC.,

EXTRACTED FROM THE THEOLOGICAL WORKS NOW USED

BY CARDINAL WISEMAN,

HIS BISHOPS AND PRIESTS.

With Notes.

By C. B.

"For it is a shame even to speak of those things which are done of them in secret."—EPI. v. 12.

(ACT III., SCENE I.—*A Confessional.*)

PRIOR. Within this chair I sit, and hold the keys  
That open realms no conqueror can subdue,  
And where the monarchs of the earth must fain  
Solicit to be subjects. \* \* \* \* \*

ALAR. O, holy father! my soul is burthened with a crime.

PRIOR. My son, the church awaits thy sin.

ALAR. It is a sin most black and terrible,  
Prepare thine ear for what must make it tremble.

PRIOR. Thou dost speak to power above all passion, not to man.

ALARCOS, by the Author of "*Vivian Grey.*"

L O N D O N :

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## P R E F A C E.

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IN the first page of these "Extracts" attention has been called to the Preface. I shall now explain in a very few words the object I had in view in doing so.

Most clergymen are already aware of the acknowledged authority of all the works from which these selections are made; but, of the laity, for whom this pamphlet is particularly intended, comparatively few are well informed on this point. The reason of this is, that although Protestant ministers of all denominations are ready enough to expose the errors of Romanism when necessary, they have, with respect to this revolting subject, (perhaps) too generally considered that "It is a shame even to *speak* of those things which are *done* of them in secret." I have therefore thought it advisable that before perusing these extracts, the reader should be accurately informed as to the great authority of all the authors quoted, and of the high estimation in which they are still held by the "Infallible Church of Rome." I shall now adduce proofs from eminent Roman Catholic authorities to show, that the books from which I have quoted are the standard works in which the student is instructed, and by which the *finished* priest is guided in the performance of his varied parochial duties.

I. Saint Alphonso M. De Liguori, who was canonized at Rome on the 26th of May, 1839, is the great example whom Cardinal Wiseman desires to imitate, and the saint whom he delighteth to honour.

In the Roman Catholic Calendar for 1845, p. 167, we find that, preparatory to his canonization, ALL THE WRITINGS of Saint Alphonsus (Liguori), whether PRINTED OR INEDITED, had been more than twenty times rigorously discussed by the Sacred Congregation of Rites, which decreed that not one word had been found in them worthy of censure.

II. Bailly, Delahogue, and Cabassutius.—In 1826, a commission was appointed by the Crown to inquire into the educational institutions of Ireland. The President and Professors of Maynooth then furnished the commissioners with the materials for a report to Parliament, in which they gave a list of the names of the class-books used in the college: in this list the three authors above named were included. Vide VIII. Report of Commissioners of Education, App. p. 449.

When examined before the commissioners, Mr. Anglade, Professor of Moral Theology, gave the following as the reason why *these* were the most suitable books in divinity which could be selected for the instruction of students. He says—

"Our object has been, seeing the want of clergy, to choose among the treatises of divinity those which are *most essential* to them for the discharge of their duty in the ministry, as they have no other occasion of improving themselves except by reading books; and so the treatises I have taught are relating to human acts, conscience, sins, sacraments, *penance in ALL its parts*, MARRIAGE, restitution, contracts, laws, censures, IRREGULARITIES."—Vide VIII. Report of Commissioners of Education, App. p. 155.

III. Peter Dens.—In 1832, a new edition of 3,000 copies of this work, in 8 vols., was published with the approbation of Doctor Murray, known of *late* (officially) as "His Grace, Archbishop Murray, of Dublin." On the appearance of an English translation of *certain portions* of this work in 1836, Dr. Murray denied that he had ever given any such approbation. The publisher, however, in a very independent manner, and much to his credit, contradicted the statement of his bishop. This soon created a feverish excitement in Dublin, in the midst of which, Dr. Murray thought fit to pay a visit to his Holiness—possibly for advice. He did not remain long in Rome; and, on his return, he published a letter on the 5th of October, 1836, addressed to his clergy, in which he publicly acknowledged and adopted Dens, and thereby contradicted all he had said a month or two before, previous to his departure for Rome. In this letter he

states that, when the publisher called on him "to express a wish to reprint that work," his opinion of its conciseness, perspicuousness, and accuracy was such, that he "at once assented." After entering into other particulars relative to the publication of the work, he goes on to say to his clergy, "*I have no hesitation in recommending it, as a useful summary, to your attentive perusal.*" Now what can we think of a religion whose bishop, nay, even an archbishop, could be guilty of first publicly denying a solemn and public act, and who could come forward shortly afterwards, and as publicly assert that there was not one word of truth in all he had before so solemnly declared? But what *did* take Dr. Murray to Rome in such a violent hurry? Was it not to be absolved by the Pope from the sin of the first mis-statement above alluded to; so that, when he returned, he was *innocent*, and ready to "begin a new score."

Let no one, however, imagine that the above named are the only *theological* works of this nature, for we are told by no less an authority than Dr. Crotty, the principal of Maynooth College, that there are HUNDREDS of others. In his examination before the commissioners he is asked—"Are the works written by Dr. Delahogue original compositions of his own, or were they compiled?" *Ans.* "They are original works. I should state, however, that there is no work yet written upon matters of that sort, of which a large portion has not been taken from previous works. *A Catholic divine who writes on matters of faith or MORALS, can write substantially only what has been written by HUNDREDS before him!*"—Irish Education Report, App. p. 76.

The Rev. M. James, of Pembroke, wrote to Dr. Murray, and asked him, "Why was Dens' Theology allowed to go to press without the omission of the objectionable passages, or at least a note?" Hear his Grace's reply, dated 21st September, 1835—"I am convinced that, because we dissent from the opinions of an author, it would not therefore be fair to *mutilate* his book, by omitting a treatise which, *in one shape or other, forms part of every similar work* PURPORTING to be a COURSE OF THEOLOGY."

Thus, we see, it is almost impossible for any Roman Catholic divine who writes on MORALS (or *Moral Theology*, as these filthy treatises are styled); to produce anything novel even on this fertile subject; so able and minute have been the commentaries of the earlier Saints and Fathers.

In his letter to Mr. James, relative to Dens, Dr. Murray says, "This work, you are aware, was not intended for the ignorant. It was written in Latin, beyond, of course, the reach of that class of persons, and designed solely for the use of professional men." This is precisely the reason why these "Extracts" are now translated into English. They are intended for the information of general readers, who either are not able, or have not time to consult the original works for themselves. Many have a vague and indefinite notion that some *queer* questions are asked in the Confessional, but very few indeed have any idea of the fearful reality as disclosed in the following pages.

Such, then, is the theology, and such the morals, which, by granting £30,000 a year to Maynooth, we assist in propagating. Surely the coming session of Parliament will not pass without this iniquitous grant being withdrawn, and the nation rescued from the reproach of fostering a system, the details of which would put the most profligate to the blush, and would not be endured in the veriest den of infamy.

In the latter part of the pamphlet I have given a few extracts without abridgment, to show into what minute and disgusting details these *holy men* have entered. This alone has been my object, and not the filling of the work with obscenity.

In conclusion, I would remark as to the practice of Confession, that in the Scriptures there is only one instance of going to confess to priests. It was at Easter, too, and the penitent paid the priests their "Easter Dues." The penitent was Judas, and after his confession he immediately hanged himself. The precedent is significant, but certainly not flattering.



# EXTRACTS,

ETC.

## DE SIGILLO CONFSSIONIS.

QUID est sigillum confessionis sacramentalis ?

R. Est obligatio seu debitum celandi ea, quæ ex sacramentali confessione cognoscuntur. — *Dens*, tom 6, p. 218.

An potest dari casus in quo licet frangere sigillum sacramentale ?

R. Non potest dari; quamvis ab eo penderet vita aut salus hominis, aut etiam interitus reipublicæ; neque summus Pontifex in eo dispensare potest: et proinde hoc sigilli arcanum magis ligat quam obligatio juramenti, voti, secreti naturalis, &c., idque ex voluntate Dei positivâ.—*Dens*, tom. 6, p. 219.

In the Roman Catholic Calendar for 1845, p. 167, we find that, preparatory to his Canonization, the MORAL SYSTEM of Liguori had been more than twenty times rigorously discussed by the Sacred Congregation of Rites, which decreed that IN ALL HIS WORKS, whether printed or inedited, *not one word had been found worthy of censure*; which decree was afterwards confirmed by Pope Pius VII. This Liguori is Wiseman's pet Saint, and the following are his doctrines, viz.:—

Respond 1. Sigillum hoc est obligatio juris divini strictissima in omni casu, etiam quo integri regni salus periclitaretur, ad tacendum,

## ON THE SEAL OF CONFES- SION.

WHAT is the seal of sacramental confession ?

*Answer.* It is the obligation or duty of concealing those things which are learned from sacramental confession.—*Dens*, vol. 6, p. 218.

Can a case be given in which it is lawful to break the sacramental seal ?

*Answer.* It cannot; although the life or safety of a man depended thereon, or even the destruction of the commonwealth; nor can the Supreme Pontiff give dispensation in this: so that, on that account, this secret of the seal is more binding than the obligation of an oath, a vow, a natural secret, &c., and that by the positive will of God.\*—*Dens*, vol. 6, p. 219.

We answer 1, That this seal is an obligation of divine right, most strict in every case, **EVEN WHERE THE SAFETY OF A WHOLE**

\* We shall soon see that, when it suits their own purpose, or the interests of the Church, the priests do not hesitate to break this Sacramental Seal of Confession.

etiam post mortem pœnitentis, dicta in confessione (id est in ordine ad absolutionem sacramentalem) omnia, quorum revelatio sacramentum redderet onerosum, vel odiosum—*Liguori*, tom. 6, p. 276, n. 634.

Quid igitur respondere debet Confessarius interrogatus super veritate, quam per solam confessionem sacramentalem novit ?

*R.* Debet respondere, se nescire eam, et si opus est, idem juramento confirmare.—*Dens*, tom. 6, p. 219.

Quæritur an Confessarius interrogatus de peccato pœnitentis possit dicere se illud nescire, etiam cum juramento. Affirmandum cum communi, quam tenent D. Thomas suppl. q. 11. art. 1. ad 3. S. Anton. 3. p. tit. 17. cap. 22. Wig. tr. 13. n. 111. Holzm. num. 722. Pal. p. 5. § 3. num. 13. cum Nav. Bon. Val. et Henriq. ac Lugo d. 23. num. 73. cum Vasq. (qui opinionem oppositam Gabrielis vocat erroneam) et aliis commun. Ratio affertur a D. Thom. loc. cit. qui dicit: "Homo non adducitur in testimonium, nisi ut homo, ideo...potest jurare se nescire quod scit tantum ut Deus;" (et hoc, etiamsi Confessarius rogatus fuerit ad respondendum non ut homo, sed præcipue ut minister Dei, prout recte aiunt Suarez et præfati auctores loc. cit.) quia Confessarius nullo modo scit peccatum scientiâ quâ possit uti ad respondendum, unde juste asserit se nescire id quod sine injustitiâ nequit manifestare. Vide dicta l. 3. n. 152. v. Hinc. Quid, si insuper rogetur ad respondendum sine æquivocatione ? Adhuc enim juramento potest respondere, se nescire, ut probabilis dicunt Lugo. n. 79. Croix. l. c. cum Stoz. et Holzm. num. 722, cum Michel, contra alios. Ratio, quia tunc Confessarius reverâ respondet

NATION WOULD BE AT STAKE, to observe silence, even after the death of the penitent, as to all things spoken in confession (*i. e.* spoken in order to obtain sacramental absolution), the revelation of which would render the sacrament itself grievous or odious.—*Liguori* vol. 6, p. 276, n. 634.

What answer, then, ought a Confessor to give when questioned concerning a truth which he knows from sacramental confession only ?

*Ans.* HE OUGHT TO ANSWER THAT HE DOES NOT KNOW IT, AND, IF NECESSARY, CONFIRM THE SAME WITH AN OATH.—*Dens*, vol. 6, p. 219.

It is asked, whether the Confessor, interrogated concerning the sin of his penitent, can say that he does not know it, even with an oath ? It is answered in the affirmative, in accordance with the common opinion which St. Thomas and others hold. The reason is adduced by the divine Thomas in the quoted place, who says: "A man is not adduced in testimony unless as a man, therefore he can swear that he does not know what he knows only as God;" (and this holds good, although a Confessor may have been asked to give his answer not as man, but especially as minister of God, as Suarez and the before quoted authors rightly say,) because a Confessor in no manner knows a sin with a knowledge which he can use for the purpose of answering; wherefore he justly asserts that he does not know that which without injustice he cannot manifest. Hence—*What if he should be asked to answer without equivocation? Even in that case he can answer with an oath that he does not know it; as more probably Lugo. Croix, Stoz. et Holzm. with Michel, teach against others. The Reason is, because then the Confessor verily answers according to the oath made, which is always under-*

secundum juramentum factum, quod semper factum intelligitur modo quo fieri poterat, nempe manifestandi veritatem sine æquivocatione, sed sine æquivocatione illâ, quæ licite omitti poterat: quoad æquivocationem vero necessariam, quæ non poterat omitti absque peccato, nec alter habet jus ut sine æquivocatione ei respondeatur, nec ideo Confessarius tenetur sine æquivocatione respondere.—*Liguori*, tom. 6, n. 646.

*Obj.* Nullo casu licet mentiri, atqui Confessarius ille mentiretur quia scit veritatem; ergo, &c.

*R.* Nego minorem; quia talis Confessarius interrogatur ut homo, et respondet ut homo; jam autem non scit ut homo illam veritatem, quamvis sciat ut Deus, ait S. Th. q. II. art. 1. ad 3, et iste sensus sponte inest responsione, nam quando extra confessionem interrogatur, vel respondet, consideratur ut homo.—*Dens*, tom. 6, p. 219.

Si sacerdos a magistratu interrogetur de iis quorum notitiam ex solâ confessione habuit, respondere debet se nescire, immo hoc ipsum jurare absque ullo mendacii periculo. Ratio est juxta Estium, quia nec mentitur, nec in equivoco ludit, qui ad mentem interrogantis respondet, at nihil nisi verum profert; atqui ita se habet Sacerdos in prefato casu, namque ab illo non quærit Judex quid scit viâ confessionis *quatenus Dei vices agit*, sed quid noverit, *quatenus homo*, proindeque extra confessionem.—*De la Hogue*, tom. 1, p. 292.

Quid si directe a Confessario quærat, utrum illud sciat per confessionem sacramentalem?

*R.* Hoc casu nihil oportet re-

stood to be made in the manner in which it was possible to be made; to wit, of manifesting the truth without equivocation, that is, without that equivocation which lawfully can be omitted. But as to the necessary equivocation which could not be omitted without sin, the other has not a right that an answer should be given to him without equivocation, neither, moreover, is the Confessor bound to answer without equivocation.\*—*Liguori*, vol. 6, n. 646.

*Objection.* In no case is it lawful to tell a lie, but that Confessor would be guilty of a lie because he knows the truth; therefore, &c.

*Answer.* I deny the minor; because such Confessor is interrogated as man, and answers as man; but now he does not know that truth as man, *although he knows it as God*, says St. Thomas, and that is the spontaneous or natural meaning of the answer; for when he is interrogated, or when he answers, outside confession, he is considered as man.—*Dens*, vol. 6, p. 219.

If a priest is questioned by a magistrate as to matters which he has learned from confession alone, he ought to reply that he is ignorant of them: nay, he ought to swear to it, which he may do without *any* danger of falsehood. It is added, on the authority of Estius, that in doing so he neither lies nor equivocates, since he frames a true reply to the intention of the person interrogating him; because the magistrate does *not* ask him what he knows from confession "*in his character as God*," but what he knows "*in his character as man*" without confession.—*De la Hogue*, vol. 1, p. 292.

What if a Confessor were directly asked whether he knows it through sacramental confession?

*Answer.* In this case he ought to

\* After reading this, who would believe any Roman Catholic on his oath?

spondere: ita Stey, cum Sylvio; sed interrogatio rejicienda est tanquam impia: vel etiam posset absolute, non relative ad petitionem dicere, "ego nihil scio," quia vox *ego* restringit ad scientiam humanam.—*Dens*, tom. 6, p. 219.

Quid si quispiam peccata sua Confessario aperiat hâc intentione, ut Confessarium irrideat, vel ut eum pertrahat in societatem exequendi malam intentionem?

*R.* Non oritur sigillum, quia Confessio non est sacramentalis. Ita Romæ judicatum fuisse, refert Dominicus Soto, in casu quo quidam accesserat Confessarium intendens eum pertrahere in conjurationis crimen contra Pontificem.—*Dens*, tom. 6, p. 220.

Denique indirecte ad sigillum reducuntur omnia, per quorum revelationem sacramentum redderetur odiosum juxta mores patriæ et temporum varietates: et ita Steyart de Pœn. § 13. num. 1, p. 226. Ex. Wig. animadvertit, aliqua uno tempore adversari sigillo, quæ alio tempore non habentur ut talia.—*Dens*, tom. 6, p. 222.

Unde resolves,

1. Violatio hujus sigilli duplicem habet malitiam: sacrilegii, contra reverentiam sacramento debitam; et inquisitiæ, ex pacto virtuali inter pœnitentem et confessarium de secreto isto servando omni casu. Dian. p. 5. t. 11. r. 2. ex Fag. Kellis. etc. Neque hic datur parvitas materiæ. Dian. p. 5. t. 5. r. 8. ex Malder. Bald. etc. (Melius dicendum quod triplicem habeat malitiam, nempe sacrilegii contra sacramentum, infidelitatis gravis, cum ex parte confessarii intercedat onerosa, quamvis

give no answer (so Steyart and Sylvius), but reject the question as impious: or he could even say *absolutely*, not *relatively to the question*, "I know nothing," because the word *I* restricts to his human knowledge.—*Dens*, v. 6, p. 219.

But if any one should disclose his sins to a Confessor with the intention of mocking him, or of drawing him into an alliance with him in the execution of a bad intention?

*Answer.* The seal does not result therefrom, because the confession is not sacramental. Thus, as Dominic Soto relates, it has been decided at Rome, in a case in which some one went to a Confessor with the intention of drawing him into a criminal conspiracy against the Pope.\*—*Dens*, v. 6, p. 220.

In fine, all things are reduced indirectly to the seal, by the revealing of which the sacrament *would be rendered odious, according to the manners of the country and the changes of the times*; and thus Steyart observes from Wiggers, that **SOME THINGS ARE AT ONE TIME OPPOSED TO THE SEAL, WHICH AT ANOTHER TIME ARE NOT CONSIDERED AS SUCH.**—*Dens*, v. 6, p. 222.

Whence you will resolve,

1. The violation of this seal involves a twofold wickedness: of sacrilege against the reverence due to the sacrament, and of injustice, from the virtual compact between the penitent and the confessor concerning the observance of secrecy in every case. Neither is the insignificance of the matter here to be taken into account. (We say more justly that it possesses a threefold wickedness, viz., the sin of sacrilege against the sacrament; of grievous unfaithfulness, since, on the

\* Liguori, in vol. 6, p. 276, n. 634; and Dens, in vol. 6, p. 219, both declare that the seal *never* can be broken, "nor can the Pope give dispensation in this" (*vide page 1*). We see, however, from Dens, vol. 6, p. 220, that they show very little compunction in violating this most explicit law whenever they wish.

tacita, promissio secretum servandi; item detractionis, si peccatum non sit publicum. Ita Spor. Roncagl. Croix, et alii communiter.)—*Liguori*, tom. 6, p. 276, n. 635.

An Confessarius narrans peccata, quæ in confessione audivit, agit contra sigillum?

*R.* Si nullo modo, nequidem in generali, peccator seu persona possit agnosci, neque etiam ullum præjudicium ipsi ex eo obvenire possit, non agit contra sigillum, quia sigillum habet relationem ad pœnitentem sive ad peccatorem.—*Dens*, tom. 6, p. 222.

Propterea provide Doctores movent ab hisce narrationibus abstinendum, quando nulla utilitatis causa movet, propter scandala, dum populus existimat Confessarium recordari singulorum peccata: et propter periculum remotum et suspiciones aliorum, Narrat Medina, lib. 2, cap. 4, Confessarium sic manifestasse personam adulteram, dum primo dixerat, primam pœnitentem fuisse confessam adulterium, postea imprudenter nominavit personam quæ ejus prima pœnitens fuerat. Quapropter etiam in petendo concilio præstat casum simpliciter proponere, non declarando illum sibi in confessione occurrere.—*Dens*, tom. 6, p. 222—3.

Quinam obligationem sigilli sacramentalis contrahunt?

*R.* Omnes illi ad quos pervenit notitia ex confessione, mediate vel immediate, licite vel illicitè.

Hoc modo tenentur sigillo interpretes in confessione, et illi, qui circa confessionale consistentes aliquid per accidens audiunt. Peccant autem illi, qui voluntarie auscultant

part of the confessor there intervenes a weighty, though tacit, promise of keeping the secret; also of detraction, if the sin be not public.)—*Liguori*, v. 6, p. 276, n. 635.

Does a Confessor, narrating the sins which he has heard in confession, act contrary to the seal?

*Answer.* If the sinner or person can by no means be discovered, not even in general, nor *any prejudice to himself* happen therefrom, he does *not* act contrary to the seal, because the seal has reference to the penitent or sinner.—*Dens*, v. 6, p. 222.

Wherefore the Doctors providently advise that we should abstain from these narrations, *when not moved by reason of utility*,\* on account of the scandal, were people to suppose that the Confessor recollected the sins of each individual: *and on account of the remote danger and the suspicions of others.* Medina tells us, *that a Confessor had thus discovered on an adulteress*, first, by saying that his first penitent had confessed an adultery, and afterwards imprudently naming the person who had been his first penitent. Wherefore, even in asking advice, it is better to state the case simply, without declaring that it has occurred to him in confession.—*Dens*, v. 6, p. 222—3.

What persons contract the obligation of the sacramental seal?

*Answer.* All those who have got their knowledge from confession, mediately or immediately, lawfully or unlawfully.

In this manner interpreters in confession are bound by the seal, and those who, sitting about the confessional, accidentally hear any thing. But they commit sin who

\* We have already called attention to the very stringent obligation of the seal,—but here, we see, a mere consideration of *utility* enables a Confessor to divulge what was considered an inviolable secret.

vel audiunt. Similiter illi tenentur sigillo, quibus Confessarius sine licentiâ pœnitentis revelavit.—*Dens*, tom. 6, p. 231.

Resp. 2. Ad sigillum tenentur omnes, ad quos quomodocumque notitia sacramentalis confessionis pervenit: qualis est I, Confessarius, qui, si de auditis in confessione rogetur, potest negare etiam, si opus est, cum juramento, subintelligendo, quod possit dicere, vel potius (ut dicit cardin. de Lugo d. 23.) quod sciat: scientiâ utili ad respondendum interroganti extra confessionem. Imo, si peccatum suum salvo sigillo non possit confiteri, debet omittere, quia sigillum strictius obligat quam integritas confessionis.—*Liguori*, tom. 6, n. 645.

voluntarily listen or hear. In like manner they are bound by the seal, to whom the Confessor has revealed *without\** the license of the penitent.—*Dens*, v. 6, p. 231.

It is answered, 2, That all are bound to the seal, to whom a knowledge of the sacramental confession comes, conveyed in whatever way it may: such is 1st, the Confessor, who, if he be asked concerning things heard in confession, can deny that he knows them, even, if it be needful, with an oath, by understanding, what he may be able to mention, or rather, what he knows with a knowledge useful for answering, being interrogated out of confession. Yea, if his own sin could not be confessed with an unbroken seal, he ought to omit it, because the seal more strictly binds than the completeness of confession.—*Liguori*, v. 6, n. 645.

After stating that a penitent can give either a written or verbal license to a Confessor to disclose what he has heard in that penitent's confession, the following *objection* is raised, and *answered* in a manner which, no doubt, will be very satisfactory to all Confessors.

*Obj.* Mali sacerdotes possent sic abuti sigillo, dicendo se habere licentiam.

R. S. Th. q. II. a. 4. ad. 3. incumbit eis probatio receptæ licentiæ; sed creditur Confessario juranti, se obtinuisse licentiam a pœnitente.—*La Croix*, lib. 6, n. 1969.

Notant etiam Du Jardin sec. 9. § 3. n. 5. Suarez d. 24. § 4. n. 12. et alii, pœnitentem posse aliquando obligari ad similem aliquam licentiam concedendum alias non absolvendum.—*Dens*, tom. 6, p. 232.

IV. Non opus esse, ut habeatur in scripto. Suar. Fagund. ll. cc. Imo, si dubium sit an Confessor cum licentiâ locutus fuerit, sacerdoti

*Objection.* Bad priests could thus abuse the seal by saying they had liberty.

St. Thomas answers, it is incumbent on them to prove that they have received the license: but a Confessor is believed when he swears he has obtained license from the penitent.—*La Croix*, vol. 6, n. 1969.

Du Jardin also, and Suarez, Antoine, and Sylvius, remark, that a penitent can sometimes be compelled to concede some such license, or OTHERWISE be NOT absolved.—*Dens*, v. 6, p. 232.

IV. It is not necessary that it (the license) should be had in writing. If it be doubtful whether the Confessor may have spoken with

\* This admits that Confessors *do* reveal without the permission of penitents.

“ They search the secrets of the house, and so  
Are worshipp'd there, and feared for what they know.”

potius quam pœnitenti credendum, ex Graff. et Henr. affirmat Dian. l. c. r. 4, vel etiam quam hæredibus; v. gr. si ex licentiâ defuncti revelet restitutionem ab iis faciendam. Tann. et Mald., qui tamen monent, eo casu, non esse dicendum eam deberi ex delicto, sed solum, quod talibus tantum dari voluerit, satiusque suaderi moribundis ut talia secreto codicillo hæredibus injungat. Vide Dian. l. c. r. 32.—*Liguori*, tom. 6, n. 651, q. IV.

An Confessario licitum est uti scientiâ acceptâ ex solâ confessione sacramentali alterius?

Quamvis semper sit illicitum frangere sigillum, quæritur tamen; utrum sit contra reverentiam sigilli, agere aliquid vel omittere aliquid ex illâ scientiâ, quod alias Confessarius non fecisset? Ad quod respectu dicitur aliquando esse contra sigillum, aliquando non esse.

Quandonam est contra sigillum uti scientiâ confessionis?

*R.* Quando subest periculum, ne aliquid directe vel indirecte reveletur de confessione personæ cognitæ. Ino quamvis nullum tale periculum apparet, neque etiam sciatur Confessarium uti scientiâ confessionis, si equidem illud cederet in gravamen verum vel apprehensum pœni-

the permission of the penitent, *the priest is to be believed rather than the penitent*; or rather than even the heirs; for example, if, from the license of the dead, he reveal that restitution should be made by them; but, however, some other divines advise in that case, that he should not say that *it was due from their fault*, but only that, *he wished that it should be given to such purposes*; and that it would be better to persuade the dying person that he should impose such things upon his heirs by a secret codicil.—*Liguori*, vol. 6, n. 651. q. IV.

Is is it lawful for a Confessor to avail himself of that knowledge which he has acquired solely from the sacramental confession of another?

Although it is always unlawful to break the seal, however it is inquired, whether it is contrary to the reverence of the seal, to do any thing, or to omit any thing, on account of that knowledge, which the Confessor could otherwise not have done? To which it is answered, *It is sometimes contrary to the seal, and sometimes NOT.\**

When is it contrary to the seal to make use of the knowledge of confession?

*Ans.* When it is attended with danger, lest any thing be revealed directly or indirectly respecting the confession of a known person. Nay, although no such danger appears, and although it be not known that the Confessor avails himself of the knowledge of confession; yet if it

\* We are told in Dens, vol. 6, p. 219, and Liguori, vol. 6, p. 276. n. 634, that the seal can *never* be broken; but here we are informed it may be broken whenever a Confessor pleases, or that it suits his purpose, provided generally, that he does not do it in a way that would render confession odious. However, when any unpleasantness does arise from his making use of knowledge acquired in the confessional, he has only to swear that the penitent gave him license; and although the penitent swears to the contrary, "the priest is to be believed rather than the penitent."—*Vide Dens*, v. 6, p. 232; *Liguori*, v. 6, n. 651. q. IV.; *La Croix*, lib. VI. n. 1969.

Also, Du Jardin, Suarez, Antoine, and Sylvius, say that a penitent can sometimes be COMPELLED TO CONCEDE A LICENSE, OR OTHERWISE NOT BE ABSOLVED.—*Dens*, vol. 6, p. 232.

tentis vel complicitis, ageretur contra sigillum, in quantum confessio sic posset reddi odiosa: v. g. si Confessarius ex solâ cognitione confessionis neget pœnitenti vel complici testimonium morum.—*Dens*, tom. 6, p. 235.

4. Quando plures—v. gr. studiosi, vel aucti, etc.—tenentur ferre testimonium confessionis, Confessarium teneri id dare, etiam iis, quos non absolvit, docet Coninck. disp. 6. d. 1. Fagundez et Dian. p. 3. tr. 15. r. 22, tum ne id negando prodatur aliquo modo sigillum, et pœnitentem; tum quia dando non mentitur, cum tantum testetur esse confessum. Verum Bonac. d. 5. q. 6. p. 4, et Cardin. de Lugo, d. 23. s. 4, docent tali schedam negare non esse contra sigillum. Idemque concedit Avers, p. 18. s. 3, si non constet pœnitentem accessisse ad hunc Confessarium: tum quia nihil dicit, sed tantum non approbat testimonio positivo confessionem, ad quod non tenetur, nec quidquam facit, ex quo possint cognosci delicta pœnitentis; tum quia alias via aperiretur fraudibus, et multi inprobi parochos in paschate deciperent; tum quia potest esse consuetudo ut scribatur absolutum esse quod falsum erit, si scribat, et si omittat, sigillum franget; tum quia scandalosum erit et iniquum, publicæ meretrici perseveranti (uti et occulto peccatori, sic pallianti suam iniquitatem) testimonium dare confessionis; neque confessario imputandum erit, quod eum positive non defendat.

might turn out to be a real or apprehended grievance to the penitent or his accomplice, it would be acting contrary to the seal, inasmuch as confession *would thus be rendered odious*: for instance; if a Confessor should from the sole knowledge of confession deny a penitent or his accomplice a testimonial of morals.\*—*Dens*, v. 6, p. 235.

4. When many persons—for example, students, courtiers, &c.—are bound to produce a testimonial of having attended confession, the Confessor is bound to give that *even to those he does not absolve*; *First*, lest by refusing he might betray in some manner the seal and the penitent. *Secondly*, because by giving it *he does not lie, since he only bears testimony that he confessed*. But Bonac, &c., teach that, to deny a certificate to such, would not be an infringement of the seal. And Avers concedes the same, *if it be not known that the penitent approached to the Confessor*; *First*, because he says nothing, but only does not prove the confession by positive testimony, to which he is not bound, neither does he do any thing from which the sins of the penitent could be known. *Secondly*, because otherwise *a way would be opened for frauds, and many wicked persons would deceive the parish-priests at Easter*. *Thirdly*, because he establishes a custom, that he may certify in writing that the penitent was absolved, which will be false if he write it, and, if he omit to do so, he will break the seal. *Lastly*, because it will be scandalous and unjust to give a testimonial of confession to a public courtesan continuing in sin (as also to a concealed sinner, thus palliating his iniquity), neither will it be imputed

\* *Testimonial*. Masters and magistrates read this, and learn what value to set upon "a character from the priest." It is not worth the piece of paper it is written upon.



Probabilius est et communius, quod, si in schedulâ scriptum sit pœnitentem tantum esse confessum, schedula sit concedenda; ut tenent Laymann. de Pœnit. cap. 14. n. 8. auctor de offic. Conf. apud Croix, q. 3. Sporer de Pœnit. c. 7. n. 839. et Diana, quia negare schedulam, idem esset ac indirecte revelare eum non esse rite confessum. Et hoc est contra Bonac. qui ait negandum esse, et contra Lugo qui cum Henr. dicit posse negari, quia, licet confessarius non possit revelare peccatum, non tenetur tamen testimonio positivo illius confessionem approbare. Sed huic rationi non acquiesco; quia, esto non teneatur cooperari approbationi illius confessionis, tenetur tamen vitare indirectam revelationem, quæ, negatâ schedulâ, vitari non potest: secus vero; si confessarius in schedulâ deberet scribere pœnitentem non solum esse confessum, sed etiam absolutum; quia, cum mendacium sit intrinsicè malum, nunquam proferri potest, ut communiter docent DD. Lugo d. 23. num. 87. Roncagl. Laym. ll. cc. Si tamen schedulæ essent jam typis editæ, quibus asseritur absolutio impertita, videtur probabile (ut aliqui recentiores dicunt) tradi posse confessis non absolutis, saltem si publice petant, quia tunc confessarius nullum profert, aut scribet mendacium, sed tantum materiale actum operatur, talem schedulam tradendo.—*Lig.* tom. 6, n. 639.

to the Confessor that he did not positively defend him.

It is *more probably and commonly held*, that if in the parchment it be only written that the penitent *confessed*, that testimonial may be granted, as Laymann and many others hold; because, to deny the certificate would be the same as indirectly to reveal that he was not duly confessed. And this is against Bonac., who says that it can be refused, and against Lugo, who, with Henr., says that it can be denied; because, although a Confessor cannot reveal a sin, however he is not bound to prove with positive testimony his confession. **BUT TO THIS REASON I DO NOT GIVE MY ACQUIESCENCE**, because, although he is not bound to co-operate to the truth of that confession, however, he is bound to avoid an indirect disclosure, which, if the certificate be denied, cannot be avoided. **But otherwise**, if the Confessor ought to write in the parchment, that the penitent not only confessed, but was absolved; because, since a lie is intrinsically evil, it can never be told, as the doctors generally teach; but if the certificates be now printed, in which it is asserted that absolution was given, it appears probable (as some more recent say), *that they may be given to those who have confessed, but who did not receive absolution*, at least if they be sought publicly, because then the Confessor *tells or writes no lie*, but only performs a *material act* in giving such a certificate.—*Lig.* v. 6, n. 639.

Here follows a curious and most ingenious disquisition as to whether priests, guilty of grave offences, can be removed from their offices: also, whether the Communion can be denied to unrepentant sinners in certain circumstances.

Omnia hæc diligentius sunt discutienda. Dubitatur I. An superior ob peccatum auditum in confessione possit amovere subditum ab officio.

All these things must be more carefully discussed. It is doubted I. Whether a superior, on account of a sin heard in confession, may

Affirmat Sambovius tom. 3. caus. 18. Idque prius docuit divus Thomas Quodlib. 5. quæst. 7. art. 13. modo absit revelatio peccati, sic dicens: Si ergo amotio subditi ab administratione possit inducere ad manifestandum peccatum in confessione auditum, vel ad aliquam probabilem suspicionem habendam de ipso, nullo modo prælatus deberet remove. Si vero per amotionem peccatum nullatenus manifestaretur, tunc, aliâ occasione acceptâ, posset subditum ab administratione remove, et deberet hoc facere cum debitâ cautelâ.—*Lig.* tom. 6, n. 656

Dubitatur III. An Confessarius possit communionem denegare pœnitenti, cui prius negavit absolutionem tanquam indisposito, si ille post hæc occulte communionem petat. *Prima sententia* affirmat. *Secunda* tamen vera sententia negat; et hanc tenent Sanchez loc. cit. n. 5. Cardinalis de Lugo d. 25. n. 126. Laymann c. 14. n. 22. Bonacina p. 5. num. 17. Sporer, num. 869. Mazzotta, c. 3. q. 5. Ratio, quia hujusmodi denegatio sacramenti vel monitio confessionem redderet odiosam, non solum pœnitentibus illicite petentibus, sed etiam aliis, qui, si scirent quod confessarius posset aliquando uti notiâ confessionis, facile absterrentur a sacramento pœnitentiæ. Hæc sententia hodie omnino est tenenda ex supra citato decreto Innocent XI. quo vetatur quilibet notiæ confessionis usus, ex quo sequatur qualemque pœnitentis gravamen. Vide num. anteced. 626.—*Lig.* tom. 6, n. 658.

Here the Saint instructs Confessors how to deceive invalids or the dying, though Confessors are always supposed

to be acting in the capacity of God!!

Approbo tamen id quod dicit idem Roncagl. ibid. q. 5. cum de Lugo dist. 22. n. 116. quod si pœnitens indispositus minuetur Confessario ob negatam absolutionem, bene poterit

remove his subject from office. Sambovius affirms that he can, which also the divine Thomas hath before taught, provided that there is no disclosure of sin, thus saying, "If, therefore, the removal of a subject from office can lead to the manifestation of sin heard in confession, or to the entertaining of some probable suspicion concerning him, by no means should the prelate remove him. But if, by removal, in no way would the sin be made known, then another occasion being taken, he can remove the subject from office, and he ought to do this with due caution.—*Lig.* v. 6, n. 656.

It is doubted, III. Whether a Confessor can deny communion to a penitent to whom, *as unfit*, he had before refused absolution, if he, after these things, secretly seek communion. The first opinion affirms that he can. However, *the second true opinion denies it*; and this Sanchez and many others hold; the reason is, because such a denial of the sacrament or admonition would render confession odious, not only to penitents unlawfully seeking it, but also to others, who, if they knew that the Confessor could by any means use the knowledge acquired in confession, *would easily be frightened away from the sacrament of penance*. This opinion in the *present day* should by all means be held according to the above-mentioned quoted decree of Innocent XI., who forbids any use of the knowledge of confession, from which any loss whatsoever would follow to the penitent.—*Lig.* v. 6, n. 658.

However, I approve that which the same Roncagl. says, That if an indisposed penitent threaten a Confessor on account of absolution denied, the Confessor can justly fly

Confessarius ab illo aufugere, et non redire, quia tunc illæ minæ non sunt peccatum manifestatum ad absolutionem obtinendam, sed peccatum in confessione commissum, quod sigillo non gaudet. Sed ea fuga tantum permittitur Confessario, si fugiendo non ingerat aliis suspicionem negatæ absolutionis; quod si eam ingereret, posset recitare aliquam orationem, non jam intendendo deceptionem pœnitentis, sed solam liberationem ab illâ vexatione, quamvis pœnitens se decipiat credens illam orationem esse formam absolutionis. Vide dicta de Sacram. l. 6. n. 39. v. E converso.—*Lig.* tom. 6, n. 659.

Quando nam licitum est uti scientiâ in confessione acquisitâ?

*R.* Quando peccator nullo modo manifestatur, nullam quoque gravamen ei aut alteri generatur, nihil denique intervenit quod odiosam reddat confessionem.—*Dens*, tom. 6, p. 238.

from him, and not return; because, in that case, these threats are not a sin made known for the purpose of obtaining absolution, but a sin committed in confession,\* which does not require the seal. But that flight is only allowed to a Confessor, if, by flying, he does not give to others the suspicion of a denied absolution; because if he would give that, he can recite some speech, not intending to deceive the penitent, but only to obtain freedom from that trouble, ALTHOUGH THE PENITENT MAY DECEIVE HIMSELF, BELIEVING THAT DECLARATION TO BE THE FORM OF ABSOLUTION.—*Lig.* vol. 6, n. 659.

When is it lawful for the Confessor to make use of the knowledge acquired in confession?

*Answer.* When the sinner is by no means discovered, also when no grievance is occasioned to him or to another; in fine, *when nothing intervenes to render confession odious.*—*Dens*, v. 6, p. 238.

## ON MIXED MARRIAGES.

An autem conditio educandi prolem in hæresi, v. g. ut filii sequantur patrem hæreticum in suâ sectâ, et filiæ matrem Catholicam, repugnet substantiæ matrimonii?

*R.* Observat Daelman quod si pars Catholica sub tali conditione iniens matrimonium, directe intenderet educationem prolis in hæresi, invalidum foret matrimonium: unde supponitur, inquit, quod duntaxat se obliget quod talem educationem non sit impeditura.

But is the condition of educating the offspring in heresy repugnant to the substance of matrimony, namely, that the sons may follow their heretical father in his sect, and the daughters their Catholic mother?

*Ans.* Daelman observes, that if the Catholic party entering matrimony under such condition, directly intended the education of her offspring in heresy, the marriage would be invalid; † whence it is supposed, he says, that she only obliges herself not to prevent such education.

After giving the opinions of other divines, Dens proceeds as follows:—

Irrita interim est hujusmodi stipulatio, cum repugnet obligationi parentum; et licet aliqui conentur

In the meantime, this kind of stipulation is null, since it is repugnant to the obligation of parents;

\* This is a very nice distinction indeed.

† And thus they make bastards of the offspring of all mixed marriages.

tale pactum excusare, dum pars Catholica tantum se obligat ad permittendum talem educationem ex causâ vitandi majoris mali in communitate ubi Catholici et hæretici permixti vivunt: attamen dicendum cum Pontio, Braunman, et Reiffenstuel, simile matrimonium cum expresso aut tacito pacto, vel sub conditione, "ut vel omnes vel aliquæ proles, v. g. masculæ educentur in sectâ patris hæretici," semper et ubique esse illicitum, iniquissimum et graviter peccaminosum contra naturalem parentum obligationem, ac contra jus divinum et ecclesiasticum: Etenim quis parentum tenetur ex pietate curare ut proles in verâ fide educetur, mediaque ad salutem necessaria acquirat: ergo non potest pacto se obligare quo permitteret educationem prolis in sectâ damnabili.

Nec contra faciunt usus et consuetudo palam in pluribus locis existentes: nam pactum hoc est contra jus divinum, contra quod consuetudo etiam immemorialis nihil operatur.—*Dens*, tom. 7, p. 144, 5.

Nota quod si Catholicus scienter contrahat matrimonium cum parte hæreticâ, non possit ex eo capite se ab eâ separare, quia renunciavit juri Divortii: excipe tamen nisi hæreticus conversionem suam promississet, nec staret promissis; item si Catholicus sciat sibi imminere periculum amittendæ fidei ex cohabitatione cum hæreticâ.—*Dens*, tom. 7, p. 180.

Similiter Sanchez existimat in copulâ fornicariâ partis Catholicæ cum hæreticâ reperiri malitiam con-

and although some endeavour to excuse such compact, whilst the Catholic party only obliges herself to *permit* such education, for the sake of avoiding greater evil in a community where Catholics and heretics live mingled together: however, we must say with Pontius, &c., that such marriage, with express or tacit compact, or under the condition "that either all, or any of the children, for instance, the males be educated in the sect of their heretical father," is ALWAYS and EVERYWHERE *unlawful, most iniquitous, and grievously sinful against the natural obligation of parents, and against the divine and ecclesiastical law*; for every parent is bound piously to take care that her offspring be educated in the true faith, and acquire the necessary means for salvation: therefore she is bound by no obligation to permit the education of her offspring in a damnable sect.\*

Nor does usage and custom openly existing in several places make against this; for this compact is against divine law, against which even immemorial custom operates nothing.—*Dens*, v. 7, p. 144, 5.

Note, that if a Catholic knowingly contract marriage with a heretic, he cannot on that head separate himself from her, because he has renounced the right of divorce; except, however, unless the heretic promised her conversion, and would not stand to her promise; *also, if the Catholic knows that he is in imminent danger of losing the faith by cohabiting with a heretic.*—*Dens*, v. 7, p. 180.

In like manner, Sanchez is of opinion, that when a Catholic commits fornication with a heretic, there

\* Thus, if the Hierarchy were established in England, and the Canon Law introduced into these countries, all the children from every mixed marriage would be obliged to be brought up as Roman Catholics, or else be declared illegitimate. Let us look at Prussia and take warning in time.

† *Danger*. That is, *even if there was no agreement before marriage*; and thus they make bastards of the offspring of all mixed marriages.

tra religionem; quia, quamvis validum sit matrimonium cum parte hæreticâ, per se tamen est illicitum, et dedecus religionis, item ob periculum perversionis, educationis proli in hæresi, quæ rationes militant etiam in copulâ fornicariâ.—*Dens*, tom. 7, p. 196, 7.

is found in the act, *a malice against religion*; because, although the marriage of a Catholic with a heretic is valid, *it is*, however, *in itself invalid*, and *a disgrace to religion*, as also on account of the danger of perversion, and of educating the offspring in heresy, WHICH REASONS MILITATE EVEN IN FORNICARIOUS\* COPULATION.—*Dens*, v. 7, p. 196, 7.

## LIGUORI TEACHES THAT IT IS LAWFUL TO CONCEAL OR DISSEMBLE THE FAITH.

IN his Second Book, Treatise First, he treats of the mysteries and obligation of faith;—in Chapter Third, he goes on to treat of concealing, dissembling, and even denying the faith.

It is asked, whether it is lawful to deny the faith, or to profess a false one?—He answers,—

“Resp. Nullo casu licet, sive voce, sive alio signo fiat, dicente Christo: *Qui negaverit me coram hominibus*, etc. Interim vero, etsi licitum non est mentiri, seu simulare quod non est, licet tamen dissimulare quod est, sive tegere veritatem verbis, aliisve signis ambiguis et indifferētibus, ob justam causam, et cum non est necessitas fatendi. Est comm. S. Thom. Kon. dis. 15. dub. 2 n. 9. Laym. 1. 2. t. i. c. 11.”

“Qui rogatus seu privatâ seu publicâ auctoritate vel tacet, vel respondet obscure, vel ait se nolle respondere; se jure non rogari, non teneri se nec velle aliis dicere quid ipse credat, ac simili modo tergiversatur, non videtur negare fidem, sed nolle prodere. Unde, si sic possit molestâ inquisitione liberari, licet, ut habet Kon. l. c. generatim enim verum non est, quod interrogatus ab auctoritate publicâ teneatur positive fidem profiteri, nisi quando id neces-

“In no case is it lawful, whether it be done by voice or any other sign, Christ having said, ‘He who hath denied me before men,’ &c. In the meanwhile, indeed, though it is not lawful to lie, or to feign what is not, **HOWEVER, IT IS LAWFUL TO DISSEMBLE WHAT IS, OR TO COVER THE TRUTH WITH WORDS, OR OTHER AMBIGUOUS and DOUBTFUL signs, for a just cause, and when there is not a necessity of confessing.**”

“He who, being asked either by private or public authority, is silent, or answers *obscurely*, or says that he does not wish to answer—that he is not justly interrogated—that he is not bound, nor does he wish to speak to others what he himself may believe, and in like manner tergiversates, does not appear to deny the faith, but is unwilling to betray it. Whence, if thus he may be able to deliver himself from a troublesome investigation, **IT IS**

\* His holy horror of heresy carries him so far as to pronounce it more sinful to commit fornication with a Protestant than with a Roman Catholic girl. No doubt these Divines speak from experience! We hope, therefore, (though no advocates for immorality of any kind), that when young Roman Catholics feel their blood too hot, they will, for their souls' sake, recollect the distinction.

sarium est, ne presentibus videatur fidem negasse." Kon. d. 15. dub. 2. Navarr. Azor. Sanch. Bec. c. 9. quæst. 4. (Hâc de vide propos. 8. inter damnatas ab Innocent XI.)

He now considers the case of a faith.

"Cum non rogaris de fide, non solum licet, sed sæpe melius est ad Dei honorem, et utilitatem proximi, tegere fidem quam fateri: ut si latens inter hæreticos plus boni facias; vel si ex confessione plus mali sequeretur, verbi gratiâ, turbatio, neces, exacerbatio tyranni, periculum defectionis, si torqueris. Unde temerarium plerumque est offerre se ultro. S. Th. Sanch. Laym. c. 11. n. 2."

Observe how Popery adapts itself so as to bamboozle the people of every country, viz. :—

"In Germaniâ audire conciones hæreticorum, deducere funus, assistere baptismo pro patrino, non habentur signa professiva fidei, vel communionis cum hæreticorum sacris. Fililuc. Azor. Sanch. ll. cc. Unde seclusis aliis, v. gr. scandalo, periculo, prohibitione, etc. si ex justâ causâ fiant, licent."

LAWFUL; for, generally it is not true that he who IS INTERROGATED by public authority is positively bound to profess the faith,\* unless when that is necessary, lest he may appear to those present to deny the faith."

Romanist not asked concerning his

"When you are not asked concerning the faith, not only is it lawful, but, often more conducive to the glory of God and the utility of your neighbours to cover the faith than to confess it; for example, IF CONCEALED AMONG HERETICS you may accomplish a greater amount of good—or, if from the confession of the faith more of evil would follow—for example, great trouble, death, the hostility of a tyrant, the peril of defection, if you should be tortured: whence it is often rash to offer one's self willingly."

"In Germany,† to hear the sermons of heretics—to attend at a funeral—to act as sponsor for a child in baptism, are not esteemed signs of professing the faith, or of communion with the religious offices of heretics. Whence, other things apart, viz., scandal, peril, prohibition, &c., if they may be done for a good cause, THEY ARE LAWFUL."

## ON EQUIVOCATION IN GENERAL.

IN treating on the subject of oaths, this approved Saint (Liguori) asks, in the fourth question, if it is lawful to use EQUIVOCATION in an oath. He replies by saying, that there are two general reasons for swearing with equivocation.

First, for a just cause.

Secondly, without a just cause.

\* But Christ says, "Whosoever shall deny me before men, him will I also deny before my Father which is in heaven." And how did Paul act when he was examined in public, and was in danger of death?

Mark! in Germany these are not sins, but elsewhere they are.

In Number 151, he first quotes the opinion of Sanchez and others, and afterwards gives his own views.

“Resp. Jurare cum æquivocatione, quando justa causa est, et ipsa æquivocatio licet, non est malum: quia, ubi est jus occultandi veritatem, et occultatur sine mendacio, nulla irreverentia fit juramento. Quod si sine justâ causâ fiat, non erit quidem perjuriun cum saltem secundum aliquem sensum verborum, vel restrictionem mentalem verum juret; erit tamen ex genere suo mortale contra religionem, cum sit gravis irreverentia, ad alterum in re gravi decipiendum, usurpare juramentum. Ita communiter DD. Sanch. lib. 3. cap. 6. Bon. p. 12. Laym. cap. 13.”

We shall now submit the “First Principles of Equivocation” by (Saint?) Liguori; and then proceed to give a few cases (by way of illustration) as we find them stated by the Saint himself.

First, to swear with equivocation *for a just cause*, is, he says, undoubtedly lawful.

“Ad majorem claritatem pro hâc dictis, et dicendis in hâc materiâ tam difficili, plura sunt distinguenda. Primo loco distinguendum, aliam esse *amphibologiam*, sive æquivocationem; aliam *restrictionem mentalem*.”

“*Amphibologia* triplici modo esse potest. I. Quando verbum habet duplicem sensum, prout, *volo* significat velle, et volare. II. Quando sermo duplicem sensum principalem habet, v. gr. *Hic liber est Petri*; significare potest quod Petrus sit libri dominus, aut sit libri auctor. III. Quando verba habent duplicem sensum, unum magis communem, alium minus, vel unum literalem, alium spirituales, ut verba illa quæ dixit Christus de Baptistâ: *Ipse est Elias*. Et Baptista dixit: *Ego non sum Elias*.”

“His positis, certum est et com-

“To swear with equivocation, when there is a just cause, and equivocation itself is lawful, is NOT EVIL; because, where there is a just cause for concealing the truth, and it is concealed without a lie, no detriment is done to an oath; but if it is done without a just cause, it will not indeed be a perjury; since, according to one sense of the word, or mental restriction, he swears true; however, it will be, OF ITS OWN NATURE, a mortal sin against religion, since it will be a great irreverence\* to take an oath to deceive another in a grave matter.

“For the clearer understanding of what is said here, and to be said in this very difficult question, many distinctions are necessary. In the first place, we are to distinguish, that one is “*double speaking*” or equivocation, and the other is *mental restriction* (or reservation).

“Double speaking can be used in a threefold manner:—I. When a word has a double sense; for example, *volo* signifies *to wish*, and, *to fly*. II. When an expression has a double principal meaning, as, *This is Peter's book*, can signify either, that Peter is the *owner*, or the *author*, of the book. III. When words have a double sense, one more common, the other less common, or one literal and the other spiritual, as are these words which Christ spake of the baptist, ‘He is Elias,’ and the Baptist said, ‘I am not Elias.’”

THESE THINGS BEING ESTAB-

\* *Irreverence*.—That is, it would be as well to avoid it; but, if hard pressed, don't stick at a trifle.

mune apud omnes, quod ex justâ causâ licitum sit uti requivocatione modis expositis, et eam juramento firmare. Ita Les. l. 2. c. 41. n. 47. Card. diss. 19. n. 35. Salm. tr. 17. de Juram. cap. 2. n. 115. ex S. Hieron. c. 22. q. 2. qui dicit, *Utilem simulationem, et in tempore assumendam*; quod explicans S. Th. 2. 2. q. 111. art. 1. ad 2. ait: *S. Hieronymus utitur largo nomine simulationis pro quâcumque fictione*. Ratio, quia tunc non decipimus proximum, sed ex justâ causâ permittimus ut ipse decipiatur; ex aliâ parte non tenemur ad mentem aliorum loqui, si justa causa subsit. Justa autem causa esse potest quicumque finis honestus ad servanda bona spiritui, vel corpori utilia." Salm. ibid. n. 109. cum Val. Sanch. Pont. et Leand.

2nd. To swear with equivocation, only a venial sin.

"Ratio hujus probabilioris sententiæ est, quia in hujusmodi juramento jam adsunt veritas et justitia: deficit tantum judicium sive discretio, cujus deficientia non est nisi venialis. Nec obstat quod ait Viva, scilicet, quod taliter jurans exerceat invocat Deum ad testificandum falsum, nam reipsâ invocat ad testificandum verum, juxta suum sensum, quamvis permittit ex justâ causâ, ut alter ex suâ incuriâ, vel inadvertentiâ decipiatur."

We now proceed to instances of equivocation and mental restriction, by way of illustration:—

"II. Reus, aut testis, a judice non legitime interrogatus, potest jurare se nescire crimen quod reverâ scit; subintelligendo nescire crimen

LISHED, IT IS A CERTAIN AND A COMMON OPINION AMONGST ALL DIVINES, THAT, FOR A JUST CAUSE, IT IS LAWFUL TO USE EQUIVOCATION IN THE PROPOUNDED MODES, AND TO CONFIRM IT (EQUIVOCATION) WITH AN OATH. Thus Less, and many others say, *That simulation is useful, and on an occasion to be used*; which St. Thomas explaining, says, that *St. Jerome uses the comprehensive term of simulation for any sort of feigning*. The reason is, because, on the one hand, we do not deceive a neighbour, but permit him to be deceived for a good cause; on the other hand, we are not bound to speak so that others may understand us, if a just cause exists. *But, a just cause is any honest end in order to preserve good things\* for the spirit, or useful things for the body.*"

*without a just cause, is, he says,*

"The reason of this more probable opinion is, because in such an oath, already truth and justice are present, only judgment or discretion is wanting, which deficiency is only venial; neither does what Viva says afford any obstacle to this opinion, namely, that a person swearing in such a manner invokes God to witness a falsehood, for he in very deed invokes God to witness what is true according to his own sense, although he permits, for a just cause, that another either through want of care or inadvertency should be deceived."

"The accused, or a witness not properly interrogated, can swear that he does not know a crime which in reality he does know, by understand-

\* Oaths are never administered except to assist us in obtaining or "preserving good things;" therefore "a just cause exists" on all occasions when an oath is required. Ergo, whenever we have occasion to take an oath, we need not hesitate about perjury, but may practise a little of what is technically phrased "hard-swearing."



*de quo legitime possit inquiri, vel nescire ad deponendum.*"

When the crime is altogether concealed, the witness is bound to say that the accused did not commit it.

"Idem, si testis ex alio capite non teneatur deponere; nempe si ipsi constet crimen caruisse culpâ, ut Salm. d. c. 2. n. 259. et Elbel n. 145. Vel si sciat crimen, sed sub secreto, cum nulla præcesserit infamia, ut Card. ibid. n. 51."

"Reus tamen, vel testis, vel legitime a iudice interrogatus, nequit ullâ æquivocatione uti, quia tenetur iusto præcepto superioris parere. Est communis Salm. c. 2. n. 146. cum Sot. Less. Sanch. etc. cum Bus n. 2. Et idem dicendum de juramento in contractibus onerosis, quia alias injuria alteri irrogaretur, Salm. ibid. Excipe in iudicio, si crimen fuerit omnino occultum; tunc enim potest, imò tenetur testis dicere reum non commisisse. Tamb. c. 4. § 2. n. 4. cum Card. et Pot. ut sup. Et idem potest reus, si non adest semipleua probatio, etc. Tamb. § 3. n. 2. cum communi; quia tunc iudex non legitime interrogat."

He now teaches that a false witness, and a man who, in making a contract deceives another, by swearing equivocally, may be absolved, and that neither is guilty of perjury.

"Sed quæritur hic 1. an, si talis reus, vel contrahens, qui æquivoce jurando deceptus, possit absolvi, nisi veritatem manifestet. Negant aliqui non improbabiler; sed probabilius affirmant Sanch. Dec. l. 2. c. 7. n. 8. et Salm. c. 2. n. 147. cum Philarch. quia tali juramento (quod perjurium nequit dici) non peccavit contra justitiam commutativam, sed contra legalem, et obedientiam iudici debitam, cujus præceptum detegendæ veritatis transiens est, duratque so-

ing that he does not know the crime concerning which legitimately he can be inquired of, or that he does not know it so as to give evidence concerning it."

"The same is true if a witness on another ground is not bound to depose; for instance, if the crime appears to himself to be free from blame, or if he knows a crime which he is bound to keep secret, when no scandal may have gone abroad.

"However, the accused, or witness, or one legitimately interrogated by a Judge, cannot use any equivocation, because he is bound to render obedience to the just command of his superior. This opinion is common to Salm. and others; and the same is to be said concerning an oath in important contracts, because, if it were not so, another would suffer injury, (Salm. ibid.) Except, however, in a trial, where the crime is altogether concealed. For then he can, yea, the witness is bound to say, that the accused did not commit the crime. And the same course the accused can adopt, if the examination is not complete, because then the Judge does not legitimately interrogate."

"But here it is enquired, 1. If such an accused person, or one who, making a contract, deceives by swearing with equivocation, may be absolved unless he makes known the truth? Some not improbably answer in the negative, but more probably Sanch. and Salm. with Philarch. SAY THAT HE CAN BE ABSOLVED, because in such an oath (WHICH CANNOT BE CALLED A PERJURY) he has not sinned against commutative justice, but against

lum dum iudex interrogat. Idem-  
que dicit Sanch. ibid. de teste men-  
tiente. Et ideo uterque absolvi  
potest, quin veritatem revelet."

"Quæritur 2. An reus legitime  
interrogatus possit negare crimen,  
etiam cum juramento, si grave  
damnum ex confessione ipsi immi-  
neat?"

"Negat Elbel n. 44. cum D. Th.  
d. art. 1. ad 2. et quidem probabilius,  
quia reus tenetur tunc pro communi  
bono damnum illud subire. Sed  
satis probabiliter Lugo de Just. d.  
40. n. 15. Tamb. lib. 3. c. 4. § 3.  
n. 5. cum Sanch. Viva q. 7. art. 4.  
n. 2. Sporer de Præc. c. 1. num. 13.  
item Elbel dict. num. 144. Card. in  
Propt. Innoc. XI. diss. 19. num. 78.  
cum Nav. Less. Sa. et Fill. et aliis  
pluribus dicunt, posse reum, si sibi  
immineat pœna mortis, vel carceris,  
aut exilii perpetui, amissionis om-  
nium bonorum, triremium, et similia,  
negare crimen, etiam cum juramento  
(saltem sine peccato gravi), sub-  
intelligendo *se non commisisse qua-  
tenus teneatur illud fateri*, modo  
sit spes vitandæ pœnæ: ratio, quia  
lex humana non potest sub gravi  
obligare homines cum tanto onere.  
Additque Elbel, hanc sententiam  
licet minus probabilem insinuandam  
tamen esse reis et confessariis, ut  
liberentur illi a culpâ gravi, in quam  
facillime inciderent si ad confessio-  
nem criminis obstringentur." Vid.  
dicenda l. 4. n. 274.

Passing over a few unimportant matters, we come to something "short  
and sweet.

"Qui juravit se servaturum se-  
cretum, non peccat contra juramen-  
tum illud detegendo, quando non

legal justice, and due obedience to  
a Judge whose command of unfold-  
ing the truth is *transient, and only  
lasts while* the Judge interrogates.  
And the same thing Sanchez says in  
the same book concerning a lying  
witness. And, therefore, each of  
them can be absolved, but he should  
reveal the truth."

"It is asked, 2. WHETHER THE  
ACCUSED, LEGITIMATELY INTERRO-  
GATED, CAN DENY A CRIME, EVEN  
WITH AN OATH, IF THE CONFESSION  
OF THE CRIME WOULD BE ATTENDED  
WITH GREAT DISADVANTAGE?"

"Elbel denies that he can, with  
S. Th. d. art. 1 ad 2, and indeed  
more probably, because the accused  
is then bound for the general good  
to undergo the loss. But SUFFI-  
CIENTLY PROBABLE, Lugo de Just.  
d. 40. n. 15. Tamb. lib. 3. c. 4. §  
3. n. 5, cum Sanch. Viva q. 7. art.  
4. n. 2. WITH MANY OTHERS, SAY,  
*that the accused, if in danger of  
death, or the prison, or perpetual  
exile—the loss of all property, the  
danger of the galleys, and such like—*  
CAN DENY THE CRIME EVEN WITH  
AN OATH (at least without great  
sin) by understanding *that he did  
not commit it so that he is bound to  
confess it*, only let there be a hope  
of avoiding the punishment. The  
reason is, because human law cannot  
lay men under so great an obliga-  
tion with so severe a penalty. And  
Elbel adds, that this opinion, although  
less probable, should be suggested  
to the accused and Confessors, *that  
they may be delivered from great  
blame,\* into which they would easily  
fall if they should be bound to the  
confession of the crime.*"

"He who hath sworn that he  
would keep a secret, does not sin  
against the oath by revealing that

\* This caution is evidently intended to screen the Confessor from the consequences  
of his complicity.

potest illud celeri absque gravi suo vel alterius damno, quia ipsa promissio secreti non videtur obligare nisi hac conditione, *si non noceat*.

“ Qui juravit judici se dicturum quæ novit, non tenetur revelare occulta. Ratio patet.” Less. Bonac. Trull. loc. cit.

Thus we see, while Rome weakens the obligation of all oaths, to serve her own purposes, she can render them stringent in the accomplishment of sin.

“ Pariter Less. c. 52. num. 48. cum Alex. Bart. etc. qui eligendus est in officium, interrogatus an habeat aliquod impedimentum, potest negare, si reverâ illud non sit tale quod impediatur.”

Sed quæritur 1. an creditor ex instrumento possit asserere cum juramento nihil sibi solutum, si reverâ sit pars soluta, sed ipse ex alio capite habeat creditum, quod probare non possit. Respondetur posse, dummodo non juret eam quantitatem sibi deberi ex illo instrumento, ne aliis creditoribus anterioribus damnum inferatur. Ita Salm. c. 2. n. 143. cum Sanch. Pal. Leand. etc.

Our *Saint* now proceeds to offer a few practical suggestions on Domestic Virtue, viz. :—1. How women may commit adultery with impunity. 2. How they may afterwards deceive their husbands.

“ Quæritur 2, An adultera possit negare adulterium viro, intelligens ut illi revelet? Potest æquivoce asserere se non fregisse matrimonium, quod vere persistit. Et si adulterium sacramentaliter confessa sit, potest respondere: *Innocens sum ab hoc crimine*, quia per confessionem est jam ablatum. Ita Card. diss. 19. n. 54. Qui tamen hic advertit, quod nequeat id affir-

secret, when he cannot conceal it without great loss to himself, or to another, because the promise of secrecy does not appear to bind, unless under this condition, *if it does not injure me*.

“ HE WHO HATH SWORN TO A JUDGE THAT HE WOULD SPEAK WHAT HE KNEW, IS NOT BOUND TO REVEAL CONCEALED THINGS. THE REASON IS MANIFEST !!!”

“ In the same manner, he who is chosen to fill an office, being interrogated whether he has any impediment, can deny that he has impediment, if that is not such as may impede.” \*

“ But it is asked, 1. Whether a creditor can assert by a deed, with an oath, that nothing was paid to him, though a part was paid, but he may have credit on another account which he may not be able to prove? We answer *that he can*, only he cannot swear that that quantity was due to him on that deed, lest other former creditors might incur loss. Salm., with many others.

“ It is asked, 2, Whether an adulteress can deny adultery to her husband, understanding that she may reveal it to him? She is able to assert equivocally, that she did not break the bond of matrimony, which truly remains; and *if sacramentally she confessed adultery, she can answer, I AM INNOCENT OF THIS CRIME, BECAUSE BY CONFESSION IT WAS TAKEN AWAY*. Card.,

\* Thus Roman Catholic tutors and governesses may *deny their religion*, because that does not “impede” them from being *qualified* to teach. In this manner they have many insidious opportunities of poisoning the minds of their pupils. Protestant parents beware of this !!

mare cum juramento, quia ad asserendum aliquid sufficit probabilitas facti; sed ad jurandum requiritur certitudo. Sed respondetur, quod ad jurandum sufficit certitudo moralis, ut diximus supra, dub. 3. n. 147, cum Salm. c. 2, num. 44, Less. Sanch. Suar. Pal. et communi. Quæ certitudo moralis remissionis peccati potest quidem haberi, quando quis bene moraliter dispositus recipit pœnitentiæ sacramentum."

however, here remarks, that she cannot affirm it with an oath, because in asserting anything, the probability of a deed suffices, but in swearing certainty is required. To this it is replied, that in swearing MORAL CERTAINTY SUFFICES, as we said above, *which moral certainty of the remission of sin can indeed be had, when any, morally well disposed, receives the sacrament of penance.*"

On the same subject he says—

"Ad quæsitum vero dicunt Salm. n. 144. cum Soto, non posse feminam adulterium negare, quia esset pura restrictio mentalis: Card. tamen n. 60. admittit in periculo mortis licere uti metaphorâ, quæ communis est in Scrip. ubi adulterium sumitur pro idolatriâ, ut ex Ezech. 23, 37. *Quia adulteratæ sunt... et cum idolis fornicatæ sunt.* Imo, si crimen sit vere occultum, probabiliter, cum Bus. infra, art. 4, et Less. Trull. ibid. ac Sanch, lib. 3. Dec. cap. 2. n. 42, cum Sot. Sayr. et Arag. potest mulier negare cum juramento, et dicere: *Non commisi*; eodem modo quo reus potest dicere judici non legitime interroganti. *Crimen non commisi*, intelligendo se non commisisse ita, ut teneatur ei manifestare; ut Tamburin. ex comm. c. 4. § 3. n. 1 et 2. Et Viva q. 7. art. 4. n. 2."

In answer to inquiry, Salm. n. 144, with Soto, say that a woman cannot deny adultery, because it would be purely mental restriction; Cardenas, however, n. 60, admits that, when in danger of death, it is lawful to use a metaphor\* which is common in Scripture, where adultery is taken for idolatry, as in Ezek. 23, 37, *because they committed adultery, and were guilty of fornication with idols.* Yea, if the crime may truly be concealed, probably with Bus, &c., *a woman can deny with an oath, and say, I did not commit the crime;* in the same way that the accused can say to his judge, not legitimately interrogating, *I did not commit the crime,* understanding that he did not so commit it, that he is bound to manifest it to him, as Tamburin," &c.

In connexion with this subject, he adds the question—

"Quæritur I. an adultera teneatur se prodere, si sciat prolem non esse legitimam, ad evitandum detrimentum mariti, et filiorum legitimorum. Affirmant Adrian. Palud. etc., apud Croix l. 3. p. 1. n. 332. Sed negant Sotus, Major, et alii ib. nisi ingens sit damnum, nempe regni, principatûs, et simile. Alii

"Whether an adulteress be bound to betray herself, if she know that her offspring is not legitimate, for the sake of avoiding detriment to her husband and legitimate children? Adrian, &c., affirm that she is; but Sotus and others *deny that she is,* unless there be great injury, for example, to the kingdom, princi-

\* We suppose this is what, in Papal logic, would be termed a *mixed metaphor*!

vero, ut Cajetan. Less. Scotus, Vasq. Med. Ricc. etc. apud Lugo d. 13. n. 45. negant nullo casu teneri matrem se infamare; et probant ex Cap. Officii 9. de Pœn. et Rem ubi dicitur: Mulieri quæ ignorante marito de adulterio, prolem suscipit, quamvis id viro suo timeat confiteri, non est communiter pœnitentia dene-ganda."—Vid. Carden, &c.

pality, and the like. But others, as Cajetan, Less., Scotus, &c., deny that in any case a mother is bound to make known her guilt, and they prove their views from Cap. Officii 9, de Pœn. et Rem., where it is said: To the woman who, the husband being ignorant of the adultery, receives offspring, although she may fear to confess that to her own husband, penance is not to be refused."

He now goes on to recommend the safest and most systematic means of encouraging profligacy. The reader will observe, that we are still quoting from our old friend, the immaculate *Saint* of 1839.

"Sic pariter si quis fuerit coactus ad matrimonium potest judici asserere etiam cum juramento, *se non contraxisse* scil. *libere*, ut par erat; Tol. lib. 4. c. 21. Laym. c. 14. n. 8. Nav. in c. Humanæ aures 22. q. 5. et Spor. loc. cit. qui idem ait de eo, qui irrita sponsalia inivit. Pariter qui matrimonium promisit, sed inde non tenetur ad illud, potest negare promissionem, scilicet, *ut ex illâ teneatur.*" Salm. n. 140.

"Thus, likewise, if any one may have been forced into matrimony, he can assert to a Judge, even with an oath, that he did not contract marriage, to wit, *freely*, as it was fit; Tol. & Spor. say *the same thing* concerning a man who has entered into marriage, which is null and void. Likewise he who hath promised marriage, but thence is not bound to marriage, can deny the promise, that is, *so as to be bound by it.*"

"Quæritur 1. utrum qui promittit concubinæ cum juramento aliam non cogniturum, teneatur ad illud. Negant Dian. cum Fagn. quia finis talis promissionis fuit pravus, nempe conservandi amicitiam, et quia tale juramentum præberet occasionem permanendi in peccato. Sed affirmant probabilius Salm. cap. 2. cum Sanch. et Prad. quia ex regulâ generali impleri debet juramentum semper, ac impleri possit sine peccato: occasio autem illa venit per accidens."

"It is inquired, 1. Whether he who hath promised to a harlot, with an oath, that he would not *know* any other, is bound to that oath? Dian. and Fagn. deny that he is, because the end of such a promise is wicked, to wit, of preserving friendship, and because such an oath would afford an occasion of continuing in sin. But Salm., Sanch., and Prad. answer, with MORE PROBABILITY, that the oath should be observed, because, according to the general rule, an oath ought always to be fulfilled, and *can be fulfilled without sin*; but that *occasion comes by accident.*"

Here we are told, that not only those who have promised marriage, but those also who *are actually* married, can assert to a Judge, even with an oath, that they did not enter into either of these solemn engagements; meaning thereby, that they did not enter into them *freely*, or *so as to be bound by them*. Nevertheless, if a man has promised to a harlot, with

an oath, that he would not *know* any other, he is bound by *that* oath. Thus, we see that, between betrothed persons, and, between husbands and wives, the obligation of oaths may be entirely disregarded; and that, in cases of adultery, a wife may use an oath to screen her own wickedness and deceive her husband. BUT the depraved fornicator is *bound by his oath* to a degraded harlot. After such a declaration, surely her Scarlet Ladyship cannot object to our calling her by the appropriate appellation of "Mother of Harlots." It is interesting to observe the maternal solicitude which she here displays for the protection of "the young ladies of her establishment." To her *unmarried* sons she has entrusted the performance of this delicate office of

" Bending the twig,  
To give the *inclination* to the tree ;

and faithfully do they perform it ; for, if we may judge from the *nature* of their studies,\* they do not allow much else to interfere with this

" Delightful task !  
To teach the young idea \_\_\_\_\_ "

Without much fear of doing violence to their holy horror of *equivocation* and *mental reservation*, they may say

" Our only books are *women's looks*,  
And *folly's* all they've taught us "

We are now informed by the *Saint*, that the Pope can exonerate an individual from any oath accepted by a third person, NO MATTER HOW BINDING.

" Limitatur tamen dictio II. mox lata in tribus casibus.—I. Si jurans sit subditus, et juramentum sit circa ea quæ superiorum potestati subduntur, ut docet S. Thom. l. c. Ideo Pontifex irritare potest omnia juramenta circa beneficia, officia ecclesiastica, etc. Parentes etiam possunt irritare juramenta impuberum, non vero puberum circa res proprias ipsorum; tutores pupillorum; superiores religiosorum; viri uxorum circa bona dotalia; domini servorum." Vid. omnia ap. Salm. c. 3. ex. n. 4. cum Bus. n. 2."

" Lim. II. Si juramentum non possit servari sine damno communi, prout esset juramentum non denu-

" However, the second assertion, just now made, is limited in three cases.—I. If he that swears is a subject, and the oath is about those things which are under the control of the superiors, as St. Thomas teaches. Therefore, the Pope can abrogate all oaths about benefices, ecclesiastical offices, &c. Parents also can abrogate the oaths of children under age, but not of children who are of age, in matters concerning their own property. Tutors can annul the oaths of their pupils. Superiors of the religious orders; husbands of their wives about dowry goods; masters of their servants."

II. It is limited if an oath cannot be observed without common loss, such as would be the oath of not

\* Students in Maynooth College devote 59 hours every week to the study of these filthy Treatises upon, what their Professors are pleased to call MORAL (but what Dr. Johnson would more accurately describe as IMMORAL) Theology.

† Monks, Nuns, &c.

tandi, non accusandi, etc. vel super contractu a lege vetito, v. gr. solvendi pœnam, si quis resiliat a sponsalibus; quod prohibetur cap. Gemma de Spons. (An etiam solvendi perdita ludo prohibito, ut dicunt Salm. Vide dicenda de Ludo tract de Cont. d. 13.) Talia juramenta verius relaxatione non indigent cum de se sint nulla juxta dicta n. 177. v. Aliter. Esto tamen essent valida, ab Ecclesiâ relaxari possunt. Salm, ibid. n. 6. cum Sanch. Pal. et Guitier. Nomine autem Ecclesiæ veniunt non solum Pontifex, sed etiam episcopi, capitula, sedibus vacantibus, et alii jurisdictionem episcopalem habentes, ut Salm. n. 7. et 8. et etiam confessarii delegatam facultatem habentes dispensandi in votis, qui possunt etiam talia juramenta relaxare:” ut Busemb. n. 3. et Salmantic. num. 9. cum Rodr. et Ledesen.

denouncing—not accusing, &c., or about a contract forbidden by law, for example, of inflicting punishment if any one does not adhere to espousals; which is prohibited in chap. Gemma de Sponsa (whether also of paying money lost by forbidden game. See what is said on gaming in the tract which treats of contracts, d. 13.) Such oaths truly do not need relaxation, since THEY ARE OF THEMSELVES NULL AND VOID, in accordance with what is said in number 177. v. Aliter. HOWEVER, LET THEM BE EVER SO VALID, THEY CAN BE RELAXED BY THE CHURCH; but in the name of the Church are included not only the Pope, but also bishops, chapters, the episcopal seat being vacant, and others having episcopal jurisdiction, and also confessors having a delegated faculty of dispensing in vows, who are able also to relax such oaths.

### TO DO EVIL THAT GOOD MAY COME.

Liguori holds this to be lawful. In page 419 he says—

“Utrum Liceat suadere, aut permittere minus malum ad majus evitandum. *Prima sententia* negat, prout tenet Laym. de Car. c. 12 n. 7. cum Azor. et aliis. Ratio, quia comparativum non tollit positivum; unde qui suadet minus malum, vere malum suadet. Limitat vero Laym. cum Azor. nisi malum illud sit virtualiter inclusum in illo alio majori. Sic parato aliquem occidere potes suadere ut manum tantum amputet; eidem tamen, non alteri designato sic, etiam volenti adulterari potes suadere fornicationem cum solutâ in generali, non autem in particulari. Admittunt hoc Salm. loc. cit. dummodo ille decreverit utrumque malum patrare, cum Nav., etc. At Laym. indistincte loquitur, et Sanch. cum secundâ sententiâ, ut mox dicetur,

“Whether it may be lawful to induce or to permit a lesser evil for the avoiding of a greater one. The first opinion denies that it is, according as Laym. and others hold. The reason of which opinion is, because a comparative does not take away the positive evil; whence he who induces one to commit a smaller sin, truly induces him to commit a sin. But Laym. with Azor limits it unless that evil is virtually included in that other greater evil. Thus you may be able to persuade any one who is determined to commit murder that he should only cut off the hand, however, of the same person, not another chosen person: thus also you may persuade a man wishing to commit adultery to commit fornication with an unmarried

hanc limitationem expresse rejicit: quia (dicit) tunc minus malum proponitur, non ut alter illud perpetret, sed ut a majori retrahatur.

“*Secunda* igitur sententia probabilior tenet, licitum esse minus malum suadere, si alter jam determinatus fuerit ad majus exequendum. Ratio, quia tunc suadens non quærit malum, sed bonum, scilicet electionem minoris mali. Ita Sanch. de Matrim. lib. 7. d. XI. n. 15. cum Sot. Mol. Nav. Medin. Sylvest. et aliis pluribus, ac Salm. tract. 21. c. 8. n. 58. cum Cajet. Sot. Pal. Bonac. etc. probabilem putat Croix lib. 2. n. 223. Hinc docet id. Sanch. n. 19. cum Cajet. Sot. Covar. Valent. parato aliquem occidere licite posse suaderi ut ab eo furetur, vel ut fornicetur. Et probat ex S. August. in c. Si quos verius, 33. q. 5. ubi: Si enim facturus est quod non licet, jam faciat adulterium, et non faciat homicidium; et vivente uxore suâ, alteram ducat, et non humanum sanguinem fundat. Ex quibus verbis, jam faciat adulterium, probat Sanch. dict. n. 15. cum Soto, Mol. Nav. Abb. etc. S. doctorem, non tantum permittendo, sed etiam suadendo locutum fuisse. Et hoc addit Sanch. 23. cum Sal. licere non solum privatis, sed aliis quibus ex officio incumbit impedire peccata subditorum.”

person *in general*, but not with any one in particular. This Salm., in the place cited, with Nav., &c., admit, provided that he hath determined to commit either evil. But Laym. speaks indistinctly with the second opinion (as will hereafter be shown), and Sanchez rejects expressly this limitation, because, he says, then a less evil is proposed to him, not that the other should perpetrate that, but that he should be drawn from a greater.

“Therefore the second opinion is the more probable one, that it is lawful to induce a man to commit a less evil, if the other has already determined to perpetrate a greater. The reason is, because he that persuades does not seek an evil but a good, to wit, the choice of a lesser evil: thus Sanch. and many others, think it probable. Hence Sanchez, &c., teach, that it is lawful to persuade a man determined to slay some one, that he should commit theft or fornication, and he proves it from St. Augustin, ‘For, if he is about to do that which is not lawful in that case he may commit adultery, and he may not commit homicide; and, *though his own wife is alive, he may marry another*, and not shed human blood.’ From which words, ‘now he may commit adultery,’ Sanchez and others prove that the doctor not only was speaking of permitting, but EVEN OF PERSUADING. And this, adds Sanchez, &c., that it is lawful not only for private persons, but even confessors, parents and others, upon whom the duty is *officially* incumbent to prevent the sins of those under them.”

Surely this one fearful extract is quite enough on this subject.



## IS IT LAWFUL TO AFFORD AN OCCASION OF SIN ?

Some of the doctors say it is not lawful ; but Liguori, and a great many others, whom he quotes, hold the contrary opinion, as you shall see by the following extracts :—

“ Hero licet non auferre occasionem furandi filiis aut famulis, cum eos, nihilominus ad furandum propensos et paratos novit, ut sic deprehensi puniantur et recipiscant : tunc enim rationabiliter permittit furtum unum, ut evitentur plura. Sanch. Laym. Bon. (Et hæc sententia videtur satis communis cum Sanch. de Matrim. l. 10. d. 12. n. 52. qui citat pro eâ Sot. Led. Nav. Sal. etc. Et consentit D. Th. in supp. 3 part. q. 62. art. 3. ad. 4. ubi : Quandoque vir uxorem suspectam de adulterio habens ei insidiatur, ut deprehendere possit eam cum testibus in crimine fornicationis ; et sic potest ad accusationem procedere. Idem admittit Tourn. t. 3. p. 337. cum Antoine.

Sanchez thinks it *probable* that it is not lawful to place an occasion of sin before a person.

“ Probabile est non licere talia ultro ponere, aut iis objicere, quia positive concurreret ad peccatum ; et non tam auferret occasionem quam poneret : sa. v. Peccatum, et Sanch. qui ex eâdem causâ docet non licere marito dare uxori ansam adulterandi vel adultero, ut tentet uxorem.”

But Laym. and Liguori maintain that it is lawful.

“ Interim probabiliter contrarium docet Laym. lib. 2. t. 3. cap. 13. quod confirmari potest exemplo Judith, quæ vix aliter videtur fecisse c. 9. Cum enim sciret permissionem libidinis in Holoferne fore

“ It is lawful for a master not to take away the occasion of stealing from his children or servants, when, notwithstanding, he knew that they had a propensity and were prepared to commit theft, that, thus taken in the act, they may be punished and come to repentance ; for, then, reasonably he permits one theft, that more may be avoided. (And this opinion appears sufficiently general, with Sanch. de Matrim., who quotes in its support many others ; and St. Th. agrees with it where he says— Whensoever a man, having a wife suspected of adultery, lays a snare for her, that he may be able, even with witnesses, to detect her in the act, and thus is able to proceed against her.

“ It is probable that it is not lawful willingly to place such things or to put them in the way, because that would be positively a concurrence in the sin, and would be not so much the taking away of an occasion, as the placing it in the way. Sanch. and others, for the same reason teach, that it is not lawful for a husband to give to his wife the occasion to commit adultery, or to the adulterer an opportunity to seduce his wife, for the sake of bringing her virtue to the trial.”

“ Meanwhile, Laym. probably teaches the *contrary* opinion, which can be confirmed by the example of Judith, who scarcely appears to have done otherwise, c. 9. For when she knew that the permission of lust in

impeditivam malorum, posuit ei occasionem, nempe ornatum suum, alioqui licitum, et tamen communiter censetur in hoc non peccasse." Vide Bonac. d. 2. q. 4. pag. 2. Palaum hic."

Holofernes would be an impediment to evils, placed before him the occasion, namely, her own beauty, otherwise lawful, and yet in this she is commonly thought not to have sinned."

Liguori now states his own view as follows:—

"Sed hoc non obstante, satis probabilis videtur prima sententia, quia cum maritus vel dominus præbet ansam mæchandi, vel furandi, non vere inducit ad peccandum, sed præbet occasionem, et permittit, peccatum alterius ex justâ causâ scilicet ut se indemnem servet a periculo damni obveniri. Aliud enim est inducere, aliud præbere occasionem. Illud est intrinsece malum, non autem hoc."

"But this reason not being valid, the first opinion appears sufficiently probable, because when a husband or master affords an opportunity of committing adultery or theft, he does not truly induce to sin, but he affords an occasion of sin, and permits the sin of another for a just cause, viz., that he may preserve himself from an evil which is about to come. For it is one thing to induce to—another thing to afford an occasion of sin. The former is intrinsically evil; the latter is not intrinsically evil."

He then proceeds to ask, "Whether it may be lawful to co-operate materially in the sin of another?" Here again our Saint is not guided by the immutable principles of right and wrong, but makes a solemn "league and covenant" with sin, purely from motives of expediency.

"Quær. III. utrum liceat famulo ostium meretrici aperire. Negant Croix lib. 2. num. 253. At communius affirmant cum Bus. Salm. d. cap. 8. num. 74. Laym. de Carit. c. 13. resp. 5. Tamb. cum Sauch. Dian. Azor. Sa. Rodr. etc. Nec officit propos. 51. Innocentis XI. dicens: 'Famulus qui submissis humeris scienter adjuvat herum suum ascendere per fenestras ad stuprandam virginem, et multoties eidem subservit, deferendo scalam, aperiendo januam, aut quid simile cooperando, non peccat mortaliter, si id faciat metu notabilis detrimenti, puta ne a domino male tractetur, ne torvis oculis aspiciatur, ne domo expellatur.' Nam *aperiendo januam* ex ipsomet contextu intelligitur de apertione per vim confectâ, ut recte dicunt Roncagl. de Carit. tract. 6.

"Query III. — Whether is it lawful for a servant to open the door for an harlot? Croix denies it, *but more commonly* Bus. and others, say that it is lawful; neither does the 51 proposition of Innocent XI. oppose this opinion, saying, 'A servant who, submitting his shoulders, knowingly assists his own master in ascending by the windows for the purpose of deflowering a virgin, and oftentimes renders assistance to him in bearing a ladder, in opening a door, or in like manner co-operating, does not sin mortally, if he does that from a fear of great injury; for example, lest he should be badly treated by his master, incur his displeasure, or be expelled from his house.' For, by 'opening the door,' from the context itself, is understood opening it by force. Only

in Reg. pro praxi n. 4. post cap. 6. Salmant. ibid. n. 74. Modo (aiunt) ipso non aperiente, adsit alius qui aperiat."

"Quær. IV. an ex metu mortis vel magni damni liceat famulo subicere humeros, vel deferre scalam domino ascendenti ad fornicandum, vi aperire januam, et similia. Negant Viva, et Milante in dict. prop. 51. P. Combina t. 2. pag. 280. Salm. n. 75. Croix lib. 2. num. 244. et alii. Quia, ut dicunt, tales actiones nunquam licent, utpote intrinsece malæ. Sed contradicunt Busemb. infra n. 68. Sanch. dict. c. 7. 22. et Less. l. 2. cap. 16. n. 59. quorum sententia spectatâ ratione mihi probabilior videtur."

(they say) if *he* does not open it, another is present who will."

"Query IV.—Whether from fear of death, or of great loss, it is lawful for a servant to stoop his shoulders, or bring a ladder for his master ascending to commit fornication, to force open the door, and such like? Viva, Milante and others, deny it; because, as they say, such actions are never lawful, inasmuch as they are intrinsically evil. But Busemb. &c., speak the contrary, whose opinion, approved of by reason, appears to me the more probable!!!"

### IS IT LAWFUL TO STEAL?

Liguori not only teaches that it is allowable for servants and others to steal; but he furnishes a regular "*scale of thefts*," to inform thieves how much they may steal from persons in the various ranks of life, without committing a mortal sin.

In Book III. number 521, he discusses the question, "Whether a creditor can compensate himself?" and afterwards proceeds to the case of servants and others, as follows:—

"Nota hic propos. 37. Innoc. XI. quæ dicebat: Famuli ac famulæ domesticæ possunt occulte heris suis surripere ad compensandam operam suam, quam majorem judicant salario quod recipiunt." Salm. de 4. præc. n. 130. cum aliis, loquentes de hac propos. damn. dicunt I., Quod si famulus sine necessitate libere conveniat cum domino de stipendio inferiori, postea nihil possit sibi compensare: secus, si ex necessitate, ad levandam nimirum suam miseriam, conveniat de salario notabiliter minori justo. Ratio, quia decreta pontificia non intendunt obligare famulum contra justitiam."

"Note here the thirty-seventh proposition of Innocent XI., which said, 'Domestic servants, men and women, can steal from their own masters for the purpose of compensating themselves for their own labour, which they judge to be greater than the salary they receive.' The Salm. with others, speaking concerning this condemned proposition, say, 1. That if a servant without necessity, and of his own accord, make an agreement with his master for an inferior salary, he cannot afterwards compensate himself: OTHERWISE (he may), if from necessity, for the purpose, doubtless, of alleviating his own misery, he agrees upon a salary notably less than just; the reason is, because the pontifical decrees are not de-

“ Dicunt II. Salmanticenses, quod si famulus ex electione propriâ augeat operas debitas, nihil possit surripere; quia tunc censetur operam suam condonare ad conciliandam sibi domini gratiam: secus autem, si ex voluntate domini expressâ, vel tacitâ; quia tunc servanda est regula illa, nempe, quod quivis operarius dignus sit mercede suâ.

But who is to be the judge of the amount to which the servant may compensate himself? Liguori thinks the servant himself may be the judge.

“ Attamen Salm. de 4. præc. num. 137. dicunt famulum posse etiam ex proprio iudicio sibi compensare suam operam, si ipse certe iudicet se majus stipendium mereri. Quod sane videtur satis probabile mihi et aliis doctis recentioribus, si hic famulus, vel quicumque alius mercenarius sit vir prudens timoratus, et vere aptus ad recte iudicandum, ac certus sit de justitiâ compensationis, remoto omni hallucinationis periculo.”

“ Indigens, bonis absconditis ad sustentationem, potest iudici respondere se nihil habere. Salm. n. 140. Pariter heres, qui sine inventario occultavit bona, si non teneatur ex illis satisfacere creditoribus, potest iudici respondere se nihil occultasse, subintelligens de bonis quibus satisfacere teneatur. Salm. loc. cit. et Ronc. c. 4. reg. 2. in Praxi.”

In *Dubium* II. he considers what quantity of stolen property is necessary to constitute mortal sin.

“ Variæ eâ de re sunt sententiæ. Nav. nimis scrupulose statuit medium regalem, alii nimis laxè 10 aureos; moderatius Tol. Med. Less. etc., duos regales, etsi minus sufficiat si notabiliter noceat.

signed to lay servants under an unjust obligation.”

“ The Salmanticenses say, in the second place, that if a servant, of his own choice, increase his labour, he cannot steal (surripere) anything; because then he is considered to give freely his own labour for the sake of conciliating the favour of his master. BUT OTHERWISE, if he do so from the expressed or tacit will of his master; because then the rule is to be observed, that the labourer is worthy of his hire.”

“ But the Salmanticenses say, that a servant can, according to his own judgment, compensate himself for his labour, if he without doubt judge that he was deserving of a larger stipend. Which indeed appears sufficiently probable to me, and to other more modern learned men, if the servant, or any other hired person, be conscientiously prudent, and capable of forming a correct judgment, and be certain concerning the justice of the compensation, all danger of mistake being removed.”

“ A poor man, absconding with goods for his support, can answer the Judge that he has nothing. In like manner, a master who has concealed his goods without an inventory, if he is not bound to settle with his creditors with them, can say to a Judge, that he has not concealed anything, in his own mind meaning those goods with which he is bound to satisfy his creditors.”

quantity of stolen property is necessary

“ There are various opinions concerning this matter; Nav. too scrupulously has fixed the half of a *regalis*, others, with too great laxity, have fixed ten *aurei*; Tol. Med. Less., &c., moderately have fixed two *regales*, although less might suffice if it would be a serious loss.

“ Resp. Ea non mathematice sed moraliter metienda est, non tantum ex valore rei ablatae, sed etiam ex circumstantiis personae cui aufertur: si nimirum ei grave damnum inferatur, aut saltem caritas Christiana graviter laedatur, quomodo respectu valde divitis imo etiam regis, unus vel alter aureus notabile quid videtur: respectu vero mediocriter divitum, quatuor circiter regales, sive medius imperialis: respectu mechanicorum duo: respectu pauperis unus.”

“ Quoad hoc punctum, tam ad praxin scitu necessarium, nempe, quatenam sit materia gravis in furto, operae pretium est plura hic elucidare. Quidquid aliqui dicant, commune est apud DD. et non videtur posse negari, quod, ad determinandam hujus materiae gravitatem, non possit absolute pro omnibus eadem quantitas assignari, sed ipsa dimetienda sit respective ad circumstantias personae, rei, loci, et temporis;— cum enim furti gravitas consistat in quantitate damni quod proximo inferitur: facile nocumentum, quod respectu unius leve erit, respectu alterius erit grave.”

The amount of guilt depends on the *place* in which the theft is committed, as the following *most ludicrous* paragraph states:

“ Quæritur hic an sit mortale furari parum reliquiae sacrae. Nulli dubium quin in districtu Romano sit mortale, cum Clemens VIII. et Paulus V. excommunicationem indixerint contra eos qui invitis rectoribus ecclesiarum, furantur reliquias etiam minimas; secus probabiliter ait Croix I. 3. p. 1. n. 1603. cum Sanch. Castrop. Dian. Badell, si quis furetur extra districtum aliquid minimum ipsam reliquam non deformans, neque

“ These things are not to be measured mathematically, but morally, not only according to the value of the thing stolen, but also according to the circumstances of the person from whom it is stolen—to wit, if he would suffer great loss, or Christian charity be grievously violated; wherefore, in respect of a very rich man, or even of a king, one or two *aurei* appear something notable; but in the case of a man of moderate wealth, about four *regales*, or the half of an *imperial*; in the case of a mechanic, *two*; in the case of a poor man, *one*.”

“ As to this point, so necessary for a practical knowledge, viz.:— What may be the grievous matter in a theft? it will be worth while here to elucidate many things.— Whatsoever some may say, it is the common opinion of divines, *and it does not appear possible to be denied*, that in determining the quantity of the matter, the same quantity cannot be absolutely assigned for all, but it is to be measured according to the circumstances of person, property, place, and time, since the seriousness of the theft consists in the quantity of the loss which is sustained by the neighbour; certainly a loss which will be light in respect of one man will be grievous in respect of another.”

“ Here it is asked, whether it be mortal sin to steal a small piece of a relic? There is no doubt but that in the district of Rome *it is mortal sin*, since Clement VIII. and Paul V. have issued an excommunication against those who, the rectors of the churches being unwilling, steal some small relic: *otherwise*, Croix probably says with Sanch., &c., if any one should steal any small thing *out* of the district of Rome, not deforming the relic itself

minuens illius æstimationem; nisi sit aliqua reliquia insignis aut rara, ut puta sanctæ Crucis, capillorum B. Mariæ Virg. etc.”

nor diminishing its estimation; unless it may be some rare or remarkable relic, as for example, the holy cross, the hair of the blessed Virgin, &c.!!!”

In *Dubium* III. he asks, “When does he sin grievously who commits many small thefts? Observe how he aids and abets thieves.

“Resp. Hic quoque quantitas læsionis, vel damnificationis, quæ fit proximo, et quam fur intendit, est mensura quantitatis peccati.—Vide Less. loc. cit. Sanch. l. 7. c. 21.

“Here also the quantity of the loss or injury which the neighbour endures, and what the thief intends, is the measure of the quantity of sin.

“Unde resolves,

“Whence you will resolve,—

“Si quis ex occasione tantum furetur sive uni sive pluribus modicum, non intendens notabile aliquid acquirere, nec proximo graviter nocere singulis furtis non peccat graviter, neque ea simul sumpta unum mortale constituunt; postquam tamen ad quantitatem notabilem pervenerit, eam detinendo, mortaliter peccare potest. Verum et hoc mortale evitabit, si vel tunc restituere non possit, vel animum habeat paulo post restituendi ea saltem quæ tunc accepit.”

“If any one, on an occasion, should steal only a moderate sum either from one or more, not intending to acquire any notable sum, neither to injure his neighbour to a great extent by several thefts, he does not sin grievously, nor do these, taken together, constitute a mortal sin; however, after it may have amounted to a notable sum, by detaining it he can commit mortal sin. But even this mortal sin may be avoided, if either then he be unable to restore, or have the intention of making restitution immediately of those things which he then received.

“Quær. II. Si furtula, quæ simul ad magnam quantitatem perveniunt, sint facta diversis dominis certis, an fur teneatur sub culpâ gravi eis restitutionem facere; vel an satisfaciat, debita illa pauperibus distribuendo. Ex unâ parte, videtur dicendum sub gravi restitutionem faciendam esse dominis, nisi excuset periculum famæ amittendæ, vel gravissimum damnum aut incommodum.”

“Query II. If small thefts, which together amount to a large sum, be made from various known masters, whether a thief be bound under great blame to make restitution to them, or whether he may satisfy by distributing them to paupers? On the one hand it appears, that restitution should be made to the original possessors, unless the danger of losing fame or very grievous loss or inconvenience excuse.”

“Unde videtur, quod sufficienter fur satisfactorius sit suæ gravi obligationi ex præsumpto consensu reipublicæ, si restituat pauperibus, aut locis piis, qui sunt egentiores reipublicæ partes.”

“Whence it appears, that a thief may have rendered sufficient satisfaction to his own weighty obligation, from the presumed consent of the republic, if he make restitution to paupers, or *pious places*,\* which are the more needy parts of the republic.”

\* Hence it appears that the unprincipled maxim of “Make money, honestly if you can, at all events make money,” is adopted

for the support of pious places. This is

In No. 536, he says:—

“ Probabilissima est hæc sententia Bus., scilicet, si plures modica furentur, neminem peccare graviter, etsi mutuo sciant grave damnum domino fieri, nisi ex communi consilio, faciant. Et hoc, etiamsi singuli eodem tempore furentur; ut cum Bus. censet Less. cap. 12. n. 24. (contra Lugo.) Ratio, quia tunc nemo est causa damni, quod, per accidens, ab aliis domino evenit.”

“ This opinion of Bus. is most probable, viz. : If many persons steal small quantities, that no one of them commits grievous sin, although they may be mutually aware of their conduct, unless they do it by concert; and this, although each should steal at the same time. The reason is, because then no one person is the cause of injury, which, *by accident*, happens to the master by the others.”

In *Dubium* IV. Liguori considers thefts of domestics or friends.

“ Uxor potest dare eleemosynam, et munera, secundum consuetudinem aliarum mulierum illius loci, et conditionis, etiamsi maritus eleemosynas omnes illi prohibeat, quia consuetudo hoc jus ei tribuit, quo maritus eam privare non potest.”

“ A wife can give alms and gifts, in accordance with the custom of other women of that place and condition, although her husband may prohibit her from giving any alms, because custom hath appointed this right to her, of which her husband cannot deprive her.”

Speaking of sons stealing, he says:—

“ Dicit Salas apud Croix l. 3. p. 1. n. 1032, non esse grave furtum filii 20 vel 30 aureorum a patre possidente annuos 1500 aureos, et non improbat Lugo d. 16. a. n. 76. Si pater non sit tenax, et filius adoleverit, et accipiat ad usus honestos. Less. Nav. et Fill. ap. Spor. de 7. præc. c. 5. num. 57 dicunt non peccare graviter filium furantem 2 vel 3 aureos a patre divite. Bannez dicit ad furtum grave filii parentis prædivitis requiri saltem 50 aureos; sed hoc Lug. et La Croix II. cc. rejiciunt: nisi forte esset filius principis, in quo consentit Holzm. num. 755. qui etiam dicit non esse grave accipere a parente prædivite decem aureos.”

“ Salas apud Croix says, that a son does not commit grievous sin, who steals 20 or 30 *aurei* from a father possessing nearly 1500 *aurei*, and Lugo does not disapprove of it. If the father be not tenacious, and the son have grown up, and receive it for honest purposes. Less, &c., say, that a son stealing two or three *aurei* from a rich father does not sin grievously; Bannez says, that 53 *aurei* are required to constitute a grievous sin on the part of a son who steals from a rich father, but this opinion Lug. and La Croix reject; unless perchance he be the son of a prince, in which case Holzm. consents, and even says that it is not a grievous sin to receive ten *aurei* from a rich parent.”

something like a *Free Church* obtaining subscriptions from *Slave Owners*, for *Missionary purposes*. Balaam's ass would have spurned both of these mercenary pranks of his sable, but more loquacious brethren.

## ON RESERVED CASES AND ABSOLUTION OF ACCOMPLICES.

Quid intelligitur per casus reservados ?

*R.* Intelliguntur peccata quædam, quorum absolutionem sacramentalem superior specialiter sibi reservat.

Hæc reservatio simplex non est censura, cum non sit proprie pœna, sed simplex negatio approbationis vel jurisdictionis.—*Dens.* tom. 6, p. 263.

Quis potest reservare peccata ?

*R.* Ille Superior, cui competit concedere approbationem vel jurisdictionem ad absolvendum a peccatis.

Summus Pontifex decernit casus reservados pro universâ Ecclesiâ; Episcopus pro suâ Diœcesi; Superiores Regularium pro suis subditis casus reservare possunt, sed juxta limitationem Clementis VIII.—*Dens.* tom. 6, p. 270.

“Advertendum quod nullus Confessorius, extra mortis periculum, licet alias habeat potestatem absolvendi a reservatis, absolvere possit aut valeat a peccato quolibet mortali externo contra castitatem, complicitem in eodem secum peccato.”

Hic casus complicitis non collocatur inter casus reservados, quia Episcopus non reservat sibi absolutionem, sed quilibet alius Confessorius potest ab eo absolvere, præterquam sacerdos complex.—*Dens.* tom. 6, p. 291, 2.

What is understood by reserved cases ?

*Answer.* Certain sins, the sacramental absolution of which the superior especially reserves to himself.

This simple reservation is not censure, since it is not properly a punishment, but a simple negation of approbation or jurisdiction.—*Dens.* v. 6, p. 263.

Who can reserve sins ?

*Answer.* That superior for whom it is competent to grant approbation or jurisdiction to absolve from sins.

The Supreme Pontiff determines the reserved cases for the universal Church; the Bishop in his own diocese; the Superiors of Regulars can reserve cases for their own subjects, but according to the limitation of Clement VIII.—*Dens.* v. 6, p. 270.

“Let it be observed that, except in case of danger of death, no Confessor, though he may otherwise have the power of absolving from reserved cases, may or can absolve his accomplice in any external mortal sin against chastity, committed by the accomplice with the Confessor himself.”

This case of an accomplice is NOT placed\* amongst the reserved cases, because the Bishop does NOT reserve the absolution to himself; but any other† Confessor can absolve from it, except the priest who is himself the partner in the act.—*Dens.* vol. 6, p. 291, 2.

\* *This case.* Thus seduction of females in the Confessional appears to be a very common occurrence, and does not constitute even a reserved case. But what is reservation? “It is not censure, but merely a withholding of approbation or jurisdiction.” Therefore as approbation is not withheld, any Confessor may absolve a novice, a nun, or a lay woman, a priest, a friar, or a monk, though they may all be guilty of committing fornication; for it is only “the graver and more atrocious crimes” that are reserved to the bishops, such as heresy, and the reading of the Bible and other heretical books, &c.

† In this way two priests in neighbouring parishes can absolve each other's *frail ones*, and afterward absolve each other.



Proinde copula cum novitiâ, vel cum Begginâ, vel aliâ voto simplici castitatis obstrictâ, non constituit casum reservatum : neque vir religiosus aut sacerdos comprehenditur ; adeo ut persona libera peccans cum Religioso sacerdote non incurrat hunc casum.—*Dens*, tom. 6, p. 287.

As copulation with a novice, or a nun, or any other woman bound by a simple vow of chastity, does not constitute a reserved case ; neither is a religious man or a priest comprehended (in a reserved case) ; so, therefore, a free woman transgressing with a *Religious priest*, does not incur this case (of reservation).—*Dens*, vol. 6, p. 287.

For the three following reasons it appears there *never can be* a reserved case against a “ Religious Priest,”—Because

1st. “ Frequenting” a novice, a nun, or any other woman, bound by a simple vow of chastity, does not constitute a reserved case.

2nd. “ Transgressing” with a free woman does not constitute a reserved case.

3rd. “ A religious man or a Priest” is never comprehended in a reserved case.

The first two reasons include *all women*, whether free or under vows ; and the third reason includes *all religious men or Priests*. Therefore *all women* are subject to the will and pleasure of *all religious men or Priests*. What would Jephtha’s daughter and her maiden companions say to this mode of keeping a vow of celibacy ? Probably the irreligious priests are in the habit of imitating the daughters of Israel upon the mountains ; viz., bewailing the virginity of their self-denying companions.

An comprehenditur masculus complex in peccato venereo, v. g. per tactus ?

R. Affirmative, quia Pontifex extendit ad qualemcunque personam.

Non requiritur ut hoc peccatum complicitis patratum sit in confessione, vel occasione confessionis : quocunque enim loco vel tempore factum est, etiam antequam esset Confessarius, facit casum complicitis.

Nota ultimo, cum restrictio fiat ad peccata carnis, poterit Confessarius complicem in aliis peccatis, v. g. in furto, homicidio, etc., valide absolvere.—*Dens*, tom. 6, pp. 291, 2.

Is a male accomplice in venereal sin, to wit, by touches, comprehended in this decree ?

Answer. Yes, because the Pope extends it to whatsoever person.

It is not required that this sin of an accomplice be committed in confession, or by occasion of confession ; for in whatever place or time it has been done, even before he was her Confessor, it makes a case of an accomplice.

Lastly, take notice, that since the restriction is made to carnal sins, the Confessor will be able to give valid absolution to his accomplice in other sins, namely, in theft, in homicide,\* &c.—*Dens*, v. 6, pp. 291-2.

After telling us that, in obedience to a bull of Gregory the Fifteenth, and a constitution founded thereon by Benedict the Fourteenth, any priest is to be denounced who endeavours to seduce his penitent in the Confessional, he asks the following question :—

\* That is if she should happen to poison her husband.

Confessarius solicitavit pœnitentem ad turpia, non in confessione, nec occasione confessionis, sed ex aliâ occasione extraordinariâ : An est denunciandus ?

*R. Negative.* Aliud foret, si ex scientiâ confessionis solicitaret, quia, v. g. ex confessione novit illam personam deditam tali peccato venereo. —*P. Antoine, t. 4, p. 430.*

Propterea monet Steyartius, quod Confessarius pœnitentem quæ confitetur se peccasse cum sacerdote, vel sollicitatam ab eo ad turpia, interrogare possit utrum ille sacerdos fuerit ejus Confessarius, an in confessione sollicitaverit, etc.

An denunciatio fieri debet, quando dubium est utrum fuerit vera et sufficiens sollicitatio ad turpia ?

*R.* Quidam negant ; sed Card. Cozza cum aliis quos citat dub. 25, affirmat si dubium non sit leve, dicens examen illud relinquendum Episcopo sive Ordinario. —*Dens, tom. 6, p. 294, 5.*

A Confessor has seduced his penitent to the commission of carnal sin, not in confession, nor by occasion of confession, but from some other extraordinary occasion ; Is he to be denounced ?

*Answer.* No. If he had tampered with her from his knowledge of confession, it would be a different thing ; because, for instance, he knows that person, from her confession, to be given to such carnal sins. —*P. Antoine, t. 4, p. 430.*

For which reason Steyart reminds us, that a Confessor can ask a penitent who confesses that she has sinned with a priest, or has been seduced by him to the commission of carnal sin, whether that priest was her Confessor, or had seduced her in the confessional, &c.

Ought the denunciation to be made, when there exists a doubt whether the sollicitation to carnal sin was real and sufficient ?

*Answer.* Some say No ; but Card. Cozza, with others whom he cites, doubt 25, says, Yes, if the doubt be not light,\* adding, that the examination of the matter is to be left to the Bishop or the Ordinary. —*Dens, v. 6, p. 294, 5.*

## ON THE MODE OF DENOUNCING THE AFORESAID SEDUCER.

Primus modus magis conveniens est, si ipsa persona sollicitata immediate, nulli alteri revelando, accedat Episcopum sive Ordinarium. 2o. Potest Episcopo scribere epistolam clausam et signatam sub hâc formâ : *Ego Catharina N. habitans Mechliniæ in plateâ N. sub signo N, hisce declaro me 6 Martii anno 1758 occasione confessionis fuisse sollicitatam ad inhonesta a Confessario N. N., excipiente confessiones. Mech-*

The first and most convenient mode is this—if the person upon whose chastity the attempt has been made, would proceed herself immediately to the Bishop or the Ordinary, without revealing the circumstance to any one else. 2nd. She can write a letter, closed and sealed, to the Bishop, in the following form : *I, Catharine N., dwelling at Mechlin, in the street N., under the sign N., by these declare, that I, on the*

\* Should the Bishop think that it was only a joke, or that the "solicitation" was insufficient, the matter is then hushed up to save the character of the Confessor.

*liniæ in Ecclesiâ N., quod juramento confirmare parata sum.*

30. Si autem scribere nequeat, similis epistola scribatur ab alio, v. g. a secundo Confessario cum licentiâ pœnitentis, et nomen pœnitentis seu personæ sollicitatæ exprimatut supra: sed nomen Confessarii sollicitantis, ut occultum maneat scribenti, non exprimatut, verum a tertio aliquo rei ignaro, in chartulâ aliquâ nomen ejus scribatur sub alio prætextu, quæ chartula epistolæ præfatæ includatur.

In hoc casu (denunciationis) tamen quidam putant moderandum, et considerandas esse circumstantias frequentiæ, periculi, etc. — *Dens*, tom. 6, p. 295.

Hence it appears, that if this “amiable weakness” is not *very* frequently exhibited, the affair is to be passed over, if possible; or, at all events, the Bishop is to make the best fight he can with the seduced penitent, to screen the priest and hush up the matter. We shall soon see how often a Confessor may *deliberately sin* with penitents *in the confessional*.

Monentur Confessarii ut mulierculis quibuscunque accusantibus priorem Confessarium fidem leviter non adhibeant; sed prius scrutentur occasionis finem et causam, examinent earum mores, conversationem, etc. — *Dens*, tom. 6, p. 295.

Non temere fidem pœnitentibus adhibendam circa similes delationes; et Confessarium, juniorem præsertim, in tam arduo negotio nihil, nisi ex prudentiorum Sacerdotum consilio, agere debere. — *De la Hogue de Pœn.*, p. 302.

6th of March, 1758, on the occasion of confession, have been seduced to improper acts by the Confessor N. N., hearing confessions at Mechlin, in the church N., which I am ready to confirm on oath.

3rd. But if she cannot write, let a similar letter be written by another, namely, *by a second Confessor* with the license of the penitent, and let the name of the penitent or person seduced be expressed as above: but let the name of the seducing Confessor, in order that it may remain a secret to the writer, be not expressed, but let his name be written, under a different pretext, by some third person ignorant of the circumstance, on some scrap of paper, which may be enclosed in the aforesaid letter.

In this case (of denouncing), however, some are of opinion that *moderation* must be observed, and that the circumstances of frequency, of *danger*, &c., must be considered. — *Dens*, v. 6, p. 295.

Confessors are advised *not lightly to give credit to any women whatsoever* accusing their former Confessor; but first to search diligently into the end and cause of the occasion, to examine their morals, conversation, &c. — *Dens*, vol. 6, p. 295.

Credit should not be readily given to penitents when they make such\* accusations as these; and the Confessor, particularly if he be a young man, ought to do nothing in so arduous an affair without the advice of the more prudent priests. — *De la Hogue de Pœn.*, p. 302.

\* See how exactly *Dens* and *De la Hogue* agree upon this critical affair. Their opinions are given almost *verbatim et literatim*.

Quocirca observa, quod quæcumque persona, quæ per se vel per aliam falso denuntiat sacerdotem tanquam sollicitatorem, incurrat casum reservatam Summo Pontifici. Ita Benedictus XIV. Constit. *Sacramentum Pœnitent.* apud Antoine, p. 418.

Benedictus XIV. in Constit. citatâ numero 216, reservavit sibi et successoribus peccatum falsæ denunciationis Confessarii sollicitantis ad turpia.—*Dens*, tom. 6, pp. 295, 6, 7.

For which reason observe, that whatever person, either by herself or by another, falsely denounces a priest as a seducer, incurs a case reserved for the Supreme Pontiff. Thus, Benedict the Fourteenth, in the Constitution called "*Sacramentum Pœnitentiæ*" in Antoine, p. 418.

Benedict the Fourteenth, in the Constitution cited in No. 216, reserves to himself and his successors, the sin of falsely denouncing a Confessor for seducing his penitent to commit carnal sin.—*Dens*, vol. 6, pp. 295, 6, 7.

### ON THE PROXIMATE OCCASION OF SIN.

Quid est occasio proxima peccandi, de quâ loquitur Pastorale?

*R.* Est id, *Quod natum est inducere in peccatum mortale.*

Recte etiam definitur :

*Id quod affert morale vel probabile periculum peccati mortalis.*

Adhæremus illis qui docent sequentia :

Frequentatio tabernarum est occasio proxima respectu illius, qui ex tribus vicibus semel, vel ex decem vicibus bis vel ter solet inde induci in ebrietatem, in rixas, vel in alia peccata mortalia.

Similiter alloquium puellæ est occasio proxima illi qui ex decem vicibus bis vel ter solet cadere in peccatum carnis, vel in delectationem carnis deliberatam.

Frequentatio quotidiana tabernæ aut puellæ censetur esse occasio proxima respectu ejus, qui ex eâ vel bis vel ter in mense prolabitur in simile peccatum mortale.

Idem resolvit P. Du Jardin p. 51 de administratione quotidianâ ali-

What is the proximate occasion of sin, concerning which the Pastoral speaks?

*Answer.* It is that which is naturally calculated to lead into mortal sin.

It is also well defined :

That which brings with it a moral or probable danger of mortal sin.

We adhere to those who teach as follows:—

Frequenting of taverns is a proximate occasion (of sin) with respect to him who is wont, out of every three times, to fall once; or out of every ten times, to fall twice or thrice into drunkenness, into quarrels, or into other mortal sins.

In like manner, speaking to a girl is a proximate occasion (of sin) to him who, out of every ten times, is wont to fall twice or thrice into carnal sin, or into deliberate carnal delight.

Daily frequenting a tavern or a girl, is considered a proximate occasion (of sin) in respect of him who, on that account, falls twice or thrice a month into like mortal sin.

P. Du Jardin is of the same opinion, p. 51, respecting the daily ad-

cujus officii licet honesti, v. g. Medici, Confessarii, Causidici, Mercatoris, si inde quis bis terve per mensem deliberate cadere soleat, et p. 53, concludit Confessarium obligari ad deserendum illud ministerium.

*Obj.* Confessarius ille quotidie occupatus in ministerio audiendi confessiones, rarissime cadit comparative ad vices quibus non cadit; ergo ministerium audiendi confessiones respectu illius non est occasio proxima.

*R.* Nego cons. quia ille, licet non comparative, absolute tamen frequenter cadit; qui enim per singulos menses committeret duo vel tria injusta homicidia, diceretur absolute frequenter committere homicidium; ille Confessarius toties occidit animam suam.—*Dens*, tom. 6, p. 175.

ministration of any office, however honest; for instance, of a physician, a confessor, a lawyer, a merchant, if any should, on that account, be accustomed to fall deliberately two or three times a month;\* and p. 53, he concludes, that the Confessor is bound to abandon that ministry.

*Obj.* That Confessor every day occupied in the ministry of hearing confessions, falls very seldom in comparison with the times he does not fall; therefore, the ministry of hearing confessions is not with respect to him a proximate occasion (of sin).

*Answer.* I deny the consequence, because he, though not comparatively, does, however, absolutely fall frequently; for he who would commit two or three unjust homicides every month, should be said absolutely to commit homicide frequently; so often does that Confessor slay his own soul.—*Dens*, v. 6, p. 175.

The following words of an old song illustrate the progress of the Confessional:—

#### THE FRYAR AND THE NUN.

1.

A lovely lass to a Fryar came,  
To confess in the morning early:  
In what, my dear, were you too blame?  
Now tell to me sincerely.  
I have done, sir, what I dare not name,  
With a man that loves me dearly.

2.

The greatest fault of myself I know,  
Is what I now discover;  
You for that crime to Rome must go,  
And discipline must suffer;—  
Lack-a-day, sir! if it must be so,  
With me you must send my lover.

3.

Oh! no, no, no, my dear, you dream,  
We must have no double dealing;  
But if you'll repeat to me that same,  
I'll pardon your past failing.—  
I own, sir, but I blush for shame,  
That your penance is prevailing.

\* Even Du Jardin, who is considered a severe disciplinarian, thinks that a Confessor may deliberately "frequent" a female penitent once a month (just to keep him from sinning); by which it would appear that the sin consists not in the act, but in performing it two or three times a month.

## ON JUST CAUSES FOR PERMITTING MOTIONS OF SENSUALITY.

Hujusmodi justæ causæ sunt auditio confessionum, lectio casuum conscientiæ pro Confessario, servitium necessarium vel utile præstitum infirmo.

Justa causa facere potest ut opus aliquod, ex quo motus oriuntur, non tantum licite inchoetur sed etiam licite continuetur: et ita Confessarius ex auditione confessionis eos percipiens, non ideo ab auditione abstinere debet, sed justam habet perseverandi rationem, modo tamen ipsi motus illi semper displiceant, nec inde oriatur proximum periculum consensûs.—*Dens*, tom. 1, pp. 299, 300.

Just causes of this sort are, the hearing of confessions, the reading of cases of conscience drawn up for a Confessor, necessary or useful attendance on an invalid.

The effect of a just cause is such, that anything from which motions arise may be not only lawfully begun, but also lawfully continued: and so the Confessor receiving those motions from the hearing of confessions, ought not on that account to abstain from hearing them, but has a just cause for persevering, providing, however, that they always displease him, and there arise not therefrom the proximate danger of consent.—*Dens*, v. 1, pp. 299, 300.

Thus it appears to be a matter-of-course, that hearing confessions is a *just cause* for entertaining sensual motions. *Dens* explains "sensual motions" to be, "sharp tingling sensations of sensual delight shooting through the body, and exciting to corporeal pleasures." Now, if a lady appears modest, the Confessor is instructed that "that modesty must be overcome, or else he is authorised to deny her absolution." "Pudorem illum superandum esse, et nolenti denegandam esse absolutionem."—*De la Hogue de pæn.* p. 68.

Attendance upon *invalids*!! is also a just cause for sensual motions. After reading this, who would marry a frequenter of the confessional. Only think of allowing a wife or daughter to go alone to confession to such beastly sensualists, or of permitting such hideous monsters to enter their sick chamber, especially when they are recovering.

Circa quæ specialiter examinari possunt adolescentes ætatis circiter viginti annorum, satis vegeti et mundani, vel potui dediti?

About what can young men be specially examined at the age of about twenty years, sufficiently vigorous and like men of the world, or given to drink?

*R.* Circa peccata luxuriæ, primo per generales interrogationes et a longinquo: v. g. an pœnitens frequentet personas alterius sexûs? Si concedat: an sint dicta quædam verba inhonesta? Quid secutum? &c. Si neget, potest inquiri: An aliquando vexetur inhonestis cogitationibus vel somniis? Si affirmet,

*Answer.* About the sins of luxury, first by general questions and from afar: for example, whether the penitent frequents persons of the other sex? If he allows that he does; whether any improper words were said? What followed, &c. If he answer in the negative, it can be asked, whether he is at any time

ad interrogationes ultiores progredi oportet.

Eadem prudentiæ forma observabitur circa adolescentulam vel mulierem vane comptam.—*Dens*, tom. 6, p. 125.

In speaking of interrogating young men and women, Bailly uses almost the same words, viz. :—

Prudens Confessarius quantum poterit pœnitentium fiduciam ore benigno adaugeat, a generalioribus ad specialiora, a minus turpibus ad turpiora procedat, nec exordium ducat a factis externis sed a cogitationibus? An pœnitens inhonestas cogitationes non volveret animo inadvertenter? Quale fuit istud desiderium? An motus illicitos non fuit expertus?

Si puella sit, interroganda erit an ornaverit se ut placeret hominibus? An in hunc finem fuco usa fuerit? An brachia, an humeros, an pectus denudaverit? An templa frequentaverit ut in limine vel fenestrâ sese ostenderet ut conspiceretur? An cum aliis quid turpe dixerit, aut legerit, aut cantaverit? An non cuipiam teneriori amore adhæreat? An nihil ei circa se permiserit? An oscula passa non sit? Quod si ulterioribus interrogationibus detur locus, ministerium suum implebit Confessarius, sed prudenter admodum et circumspecte.—*Bailly*, tom. 7, p. 366.

An quispiam voto castitatis obstrictus facit contra suum votum, si aliis personis liberis sit causa libidinis, v. g. si consulat aliis ut illi inter se fornicentur?

R. Peccat peccato scandali, et

tormented with improper thoughts or dreams? If he say YES, it is fit to proceed to further questions.

The same form of prudence shall be observed about a young girl, or a woman vainly decked.—*Dens*, v. 6, p. 125.

The prudent Confessor will endeavour, as much as possible, to induce his confidence by kind words, and then proceed from general to particular questions — from less shameful to more shameful things; not beginning from external acts, but from thoughts, such as, Has not the penitent been troubled, inadvertently as it were, with improper cogitations? Of what kind was the thought indulged? Did he experience any unlawful sensations?

If the penitent be a girl, let her be asked—Has she ornamented herself in dress so as to please the male sex? or, for the same end, has she painted herself; or, bared her arms, her shoulders, or her bosom? Whether she has frequented church in order that she might show herself to be looked at in the porch or at the window? Whether in company with others she has spoken, read, or sung anything immodest? Whether she is not attached to some one? Whether she has not allowed him to take liberties with her? Whether she has not allowed him to kiss her? But if opportunity shall offer for carrying the inquiry further, the Confessor will do his duty, but, however, prudently and cautiously.—*Bailly*, vol. 7, p. 366.

Does any one bound by a vow of chastity act against his vow, if he be the cause of lechery to others who are free from such vow; for instance, if he advise others to commit fornication with one another?

Answer. He is guilty of the sin

fit reus fornicationis illorum ; verumtamen non videtur violare votum proprium mere ob fornicationem aliorum, si absit complacencia propria, quia non vovit servare castitatem alienam sed propriam, sicuti conjugatus id consulens non peccat contra fidem matrimonii sui.

*Obj.* Vovens castitatem vovet non cooperari aut consentire ulli peccato contra castitatem.

*R.* Id negatur.—*Dens*, tom. 4, p. 377.

An Confessarius potest absolvere sponsam, dum cognoscit ex solâ confessione sponsi, quod sponsa in confessione reticeat fornicationem habitam cum sponso ?

*R.* Varias reperio opiniones : La Croix, lib. 6, p. n. 1969, existimat sponsam non esse absolvendam, sed dissimulanter dicendum : *Misereatur tui*, &c. ita ut ipsa ignoret sibi absolutionem negari.

Prudentes Confessarii solent et statuunt regulariter inquirere ab omnibus sponsis, utrum occasione futuri matrimonii occurrerint cogitationes quædam inhonestæ ? Utrum permiserint oscula et alias majores libertates ad invicem ex eo, quod forte putaverint jam sibi plura licere ?

Cum verecundia soleat magis corripere sponsam, propterea solemus prius in confessione audire sponsum, ut sponsa postea confidentius exponat quod novit jam esse notum Confessario.

of scandal, and stands arraigned of their fornication ; however, he does not seem to violate his own vow merely on account of the fornication of others, if he feel no complacency himself, because he has made no vow to preserve the chastity of others, but his own, just as a married man advising it does not sin against the faith of his matrimony!!!

*Obj.* He that makes a vow of chastity, vows not to co-operate with, or consent to any sin against chastity.

*Answer.* That is denied.—*Dens*, vol. 4, p. 377.

Can a Confessor absolve a young woman betrothed in marriage, whilst he knows solely from the confession of the betrothed husband, that she does not disclose in her confession the fornication she has ben guilty of with her betrothed ?

*Answer.* I find various opinions : La Croix thinks that she ought not to be absolved, but that the Confessor should dissemble,\* and say *Misereatur tui*, &c., so that she may not know that absolution has been denied her.

Prudent Confessors are wont, and lay it down as a rule, regularly to ask all betrothed young women, whether from occasion of their approaching marriage there occurred to them any improper thoughts ? whether they permitted kisses and other greater alternate liberties, because perhaps they thought that greater freedoms were now allowed them ?

And since the young woman is more under the influence of modesty, we are wont for that reason to hear the betrothed husband's confession first, that she may afterwards more confidently reveal to the Confessor what she knows to be known to him already.

\* Even when the priest acts in the capacity of God, he may practise deception !



Addunt aliqui sponsum, qui prius confitetur, posse induci, ut dicat sponsæ se peccatum illud aperte esse confessum. Post confessionem sponsæ id non licet amplius.—*Dens*, tom. 6, pp. 239, 240.

Some divines add, that the betrothed husband, who makes his confession first, can be induced to tell her that he has openly confessed that sin. After the young woman's confession, that would be no longer in the Confessor's power.—*Dens*, v. 6, pp. 239, 240.

We can assure our readers that the following extracts are from the MORAL THEOLOGY!!! of the celebrated Peter Dens.

37. Quid est morosa delectatio ?

R. Est voluntaria complacentia circa objectum illicitum absque voluntate implendi seu exequendi opus.—*Dens*, tom. 1, p. 303.

38. An licita est delectatio morosa de opere jure naturæ prohibito, sed sine culpâ formali hic et nunc posito, v. g. delectatio de pollutione nocturnâ involuntariâ ?

R. Neg. quia objectum delectationis est intrinsecus malum, adeoque deliberata delectatio de eâ est mala.

Multi tamen, ut Salmanticenses, Vasquez, Billuart, Antoine, &c., putant quod licet illicitum sit delectari de homicidio, ebrietate, &c., involuntarie commissis, illicitum tamen non sit, ob finem bonum, de pollutione mere naturali et involuntariâ delectari: vel affectu simplici et inefficaci eam desiderare.

Hujus sententiæ etiam est S. Antonius, parte 2, tit. 6, cap. 5.

39. Dicitur "affectu simplici et inefficaci; quia si desideretur efficaciter, ita ut ex desiderio pollutio causetur, vel media ut eveniat adhibeantur, certum est juxta omnes quod sit peccatum mortale. Ratio horum Auctorum est, quod pollutio mere naturalis et involuntaria nullo jure prohibeatur: cum sit effectus mere naturalis, seu mera naturæ evacuatio, ut sudor, saliva, &c., ac

What is morose delight ?

*Answer.* It is a voluntary complacency about an illicit object without a wish of performing or executing the work.—*Dens*, vol. 1, p. 303.

Is morose delight allowed on a thing prohibited by the law of nature, but here and now having taken place without a formal fault; for instance, delight on nocturnal involuntary pollution ?

*Answer.* No; because the object of the delight is intrinsically bad; and therefore deliberate delight respecting it is also bad.

Although many think that it is unlawful to delight on homicide, drunkenness, &c., involuntarily committed; it is not unlawful, however, *on account of the good end*, to delight on merely natural and involuntary pollution, or to desire it with a simple and inefficacious affection.

Of this opinion also is Saint Antony,\* part 2, tit. 6, chap. 5.

They say "with a simple and inefficacious affection;" because, if it be desired efficaciously, so as that the pollution be caused by the desire, or if means be employed that it may happen, it is certain, according to all, that it is a mortal sin. The reason of these Authors is, that pollution merely natural and involuntary is prohibited by no law; since it is a merely natural effect, or

\* What a pure Saint!—what does he consider is the "good end" to be gained.

proinde nequidem materialiter seu objective mala unde illam ut talem inefficaciter velle non est peccatum.—*Dens*, tom. 1, pp. 310, 11.

a mere evacuation of nature, like sweat, saliva, &c.; and therefore it is by no means materially or objectively bad; whence it is not a sin to wish for it inefficaciously as such.—*Dens*, v. 1, pp. 310, 11.

## ON REFUSING OR DENYING MARRIAGE DUTY.

In omni peccato carnali circumstantia conjugii sit exprimenda in confessione.

An aliquando interrogandi sunt conjugati in confessione circa negationem debiti?

*R.* Affirmative: presertim mulieres, quæ ex ignorantia vel præ pudore peccatum istud quandoque reticent: verum non abrupto, sed prudenter est interrogatio instituenda v. g. an cum marito rixatæ sint, quæ hujusmodi rixarum causa; num propter talem occasionem maritis debitum negarint; quod si deliquisse fateantur, caste interrogari debent, an nihil secutum fuerit continentiæ conjugali contrarium, v. g. pollutio, &c.—*Dens*, tom. 7, p. 149.

Hinc uxor se accusans in confessione quod negaverit debitum interrogetur, an maritus ex pleno rigore juris sui id petiverit: idque colligetur ex eo, quod petiverit instanter, quod graviter fuerit offensus, quod aversionis vel alia mala sint secuta, de quibus etiam se accusare debet, quia

In every carnal sin let the circumstance of marriage be expressed in confession.

Are the married to be at any time asked in confession about denying the marriage duty?

*Answer.* Yes: particularly the **WOMEN**, who, through ignorance or modesty, are sometimes silent on that sin; but the question is not to be put abruptly, but to be framed prudently: for instance, whether they have quarrelled with their husbands—what was the cause of these quarrels—whether they did upon such occasion deny their husbands the marriage duty; but if they acknowledge they have transgressed, they ought to be asked chastely, whether anything followed contrary to conjugal continence, namely **POLLUTION**,\* &c.—*Dens*, v. 7, p. 149.

Hence let the wife, accusing herself in confession of having denied the marriage duty, be asked whether the husband demanded it with the *full rigour* of his right; and that shall be inferred from his having demanded it instantly, from his having been grievously offended, or

\* The following is a tolerably minute description, considering that the author was sworn to celibacy from early youth:—

Notatur, quod pollutio in mulieribus quandoque possit perfici, ita ut semen earum non effluat extra membrum genitale; indicium istius allegat Billuart, si scilicet sentiat seminis resolutionem cum magno voluptatis sensu, qua completa passio satiatur.—*Dens*, tom. 4, p. 380.

It is remarked that women may be sometimes guilty of imperfect pollution, even without a flow of their semen to the outside of the genital member (the passage), of which Billuart alleges a proof:—If, for instance, the woman feels a loosening of the semen, with a great sense of pleasure, which being completed, her passion is satiated.—*Dens*, v. 4, p. 380.

fuit eorum causa: contra si confiteatur rixas vel aversiones adversus maritum interrogari potest; an debitum negaverit?—*Dens*, tom. 7, p. 150.

from aversion or any other evils having followed, of which she ought also to accuse herself, because she was the cause of them. On the other hand, if she confess that there exist quarrels and aversions between her and her husband, she can be asked whether she has denied the marriage duty.—*Dens*, v. 7, p. 150.

Thus, if a married woman confesses, that in sulk, or whim, or for any other reason, she has not rendered *due benevolence*, she is compelled to give the Confessor a full, true, and particular account of the way in which her husband insisted upon his right, viz., whether in anger and with threats, or with entreaties and coaxing endearments. In this manner the Confessor not only ferrets out the most secret acts of the married, but also ascertains, whenever he chooses, what is the peculiar mettle of the husband, and disposition of the wife.

The following passages from the “Moral Theology” of Bailly, the reader will perceive, are almost word for word, the same as those selected from *Dens* on the same subject.

An teneantur conjuges reddere debitum?

Are married persons bound to render the marriage debt?

R. Eos teneri sub peccato mortali; quia res est per se gravis; cum inde nascantur rixae, odia, dissensiones. Dum vel expresse vel tacite exigitur, dum petitur verbis vel signis (inquit S. Thomas).—*Bailly*, tom. 4, p. 483.

*Answer.* They are bound under pain of mortal sin, because the matter is of itself important, since from thence arise quarrels, hatreds, dissensions. It must be rendered when it is required expressly or tacitly, when sought after by means of words or signs (saith St. Thomas).

Dixi autem Io. utrumque conjugum teneri; in eo enim pares sunt ambo conjuges, ut patet ex verbis Apostoli.

But I have said that each is bound; for in this affair both man and wife are equal, as is clear from the words of the apostle.

Dixi 2o. eos teneri sub peccato mortali quia res est per se gravis, cum inde nascantur rixae, odia dissensiones parsque debito fraudata incontinentiae periculo exponatur: quod lethale est. Hinc Parochus aut per se in Tribunali Pœnitentiae, aut saltem, et quidem aliquando prudentius, piæ matris ministerio, edocere debet sponso et præsertim sponsas, quid in hac parte observandum sit. Cum vero mulieres ejusmodi peccata in confessione sacramentali, præ pudore aut ignorantia non raro reticeant, expedit aliquando

I have said in the second place, that they are bound under mortal sin, because it is a weighty affair in itself, since it is the active cause of quarrels, hates, dissensions, and since the party defrauded of duty is exposed to the danger of incontinence, which is a deadly sin, hence the Parish Priest, either himself personally in the Tribunal of Penance, (the Confessional,) or at least, and sometimes more prudently, by the agency of a pious matron, ought to inform married persons, and *particularly married*

de iis illas interrogare, sed caute et prudenter, non ex abrupto: v. g. inquiri potest an disidia fuerint inter eam et conjugem, quæ eorum causæ, qui effectus, an propterea marito denegaverit quod ex conjugii legibus ei debetur.—*Bailly, Tract, de matrimo.* p. 482.

women, of what they should observe with respect to this matter. But since women, through modesty or ignorance, not unfrequently conceal sins of that sort in sacramental confession, it is expedient sometimes to interrogate them concerning those sins, but cautiously, prudently, not abruptly: for instance, it may be asked whether there have been any dissensions between her and her husband—what was the cause—and what the effect of them—whether she has on that account denied to her husband what is due to him by the laws of marriage?—*Bailly, vol. 4, p. 482.*

He then gives thirteen reasons for excusing the parties from paying the Marriage debt. We shall quote only two or three of them, viz:—

Si exigens remisse petat.

If the party demanding asks it carelessly!!

Si petens sit in ebrietate vel amentia.—*Bailly, tom. 4, p. 485.*

If the party demanding be drunk or mad.—*Bailly, vol. 4, p. 485.*

Si conjux unus, saepius ac immoderate petat!!!

If one party demands too often and immoderately.

Debitum nec reddi potest nec peti in loco publico, nec coram liberis, aut domesticis; nec eo modo, qui sit contra naturam.—*Bailly, tom. 4, p. 486.*

The debt can neither be paid nor demanded in a public place, nor before children or domestics!!! nor in that manner which is contrary to nature.—*Bailly, vol. 4, p. 486.* Dublin edition.

He goes on to ask as to, “When *Wives* are excused from rendering payment of the aforesaid debt?” viz:—

An frequentes abortus a redditione debiti mulierem eximant?”

Do frequent abortions exempt the woman from rendering the debt?

An temporibus menstrui fluxus, puerperii et gravitatis debitum licite peti aut saltem reddi protest?”—p. 487.

Can the debt be lawfully demanded, or at least rendered, at the time of the monthly terms, childbirth, or pregnancy?

An justa sit debitum denegandi causa, quod proles a muliere ablactatur?”—*Bailly, tom. 4, pp. 486, 7, 9.* Dublin edition.

Is it a just cause for refusing the debt, because the woman is suckling the offspring?—*Bailly, vol. 4, pp. 486, 7, 9, Dublin edition.*

He now proceeds with a few *Miscellaneous Estimates*, such as:—

An licitum sit conjugibus matrimonio utentibus optare non inde oriri prolem?

Is it lawful for married persons using matrimony, to wish that thence offspring should not be born?

An liceat matrimonii usum petere propter vitandam compartis incontinentiam?

An licitum sit matrimonio uti propter voluptatem?—*Bailly*, tom. 4, p. 481.

Per accidens ejus modi intemperantia potest esse lethalis:—1. Si immoderata sit, ac noceat valetudini sive exigentis debitum sive reddentis. 2: Si conjux aliam, non conjugem intendit, ut expresse docet S. Thomas, in 4 dist. 31, quest. 2, art. 3. 3. Si ita frequens sit, ut impediatur tempora, quae debentur orationi, ut apertis verbis tradit Augustinus.—*Bailly*, tom. 4, p. 482.

Si constet alterum conjugem esse adulterum potest pars innocens parti adulterae debitum denegare?—Non potest conjux conjugi adultero debitum denegare, si ejusdem criminis ille reus sit—quia tunc est compensatio; quinimo nec idem potest pars innocens, si injuriam condonaverit; e. g. debitum sponte reddendo vel alia amoris conjugalis signa exhibendo.—*Bailly*, tom. 4, p. 485.

Is it permitted to demand the use of matrimony, for the purpose of avoiding incontinence in the partner?

Is it lawful to use matrimony solely for pleasure?—*Bailly*, vol. 4, p. 481. Dublin edition.

By accident intemperance of this kind may be a deadly sin:—1. If it be immoderate and injures the health of either party. 2. *If the married party intends another and not their own partner!!!* as St. Thomas expressly teaches. 3. If it be so frequent as to interrupt the time due to prayer,\* as St. Augustine openly maintains.—*Bailly*, v. 4, p. 482. Dublin edition.

If it be manifest that one of the married parties be guilty of adultery, can the innocent refuse the debt to the guilty party?—A married party cannot refuse the debt to the one guilty of adultery, if that party be guilty of the same crime—because then there is compensation; neither, moreover, can the innocent party do the same (viz., refuse) if the injury has been pardoned—as, for example, by spontaneously rendering the debt, or by exhibiting *other signs of conjugal love*.—*Bailly*, vol. 4, p. 485.

Liguori enters more fully into this subject, and apparently with great familiarity. We shall now give one or two extracts from his Works, viz:—

Hic quæritur I. an aliquando vir teneatur petere. Per se loquendo, non tenetur petere: tenetur vero per accidens, nimirum si uxor tacite exigat; puta si ostendat aliquod indicium, quo tacitam petitionem significet; quia in mulieribus ob innotam etiam verecundiam talia signa habentur pro vera petitione. Ita communiter Sanch. lib. 9. d. 2. n. 3. et alii universe ex divo Thoma Suppl. 3 q. 64. art. 2. ubi: Quando

Here it is asked, 1st. Is the husband sometimes bound to demand the debt? Speaking of itself, he is not bound to demand; but he is by accident bound, namely, if the wife should *tacitly* require it, for instance, if she shows some token, by which she signifies a *tacit* demand; because in the case of women, on account of their innate modesty, such signs are held in the place of real demand. Thus commonly

\* The two last peculiarities must have been confined to the age and clime in which these saints flourished.

vir percipit per aliqua signa, quod uxor vellet sibi debitum reddi, sed propter verecundiam tacet. . . tenetur reddere. E converso, recte dicit Sanchez n. 5. cum Soto et Palao, ex eodem D. Thom. in 4. d. 32. q. unic. art. 3. ad 2. non teneri mulierem reddere viro, nisi hic expresse petat: cum enim non pudeat viros expresse exigere, bene possunt uxores præsumere quod viri expresse non petentes nolint ipsas obligare ad petendum; imo ego sentio, nec posse, quia nequit maritus obstringere mulierem, ut cum tanta sua erubescencia debitum petat. Recte tamen excipit Sanch. 1. c. cum S. Antonin. Nav. Sylv. et Manuel, nisi talis erubescencia potius præsumatur aliquando (quod ceterum raro accidit) esse ex parte viri, quam feminae; puta si illa esset maximæ auctoritatis, aut feræ conditionis, et vir valde pusillanimus ac verecundus. Regulariter tamen, bene subdit Sanch. non tenetur uxor reddere, nisi evidenter ei constet de hac pusillanimitate et pudore mariti.—*Liguori*, tom. 6, n. 928.

Quærit. II. an uxor teneatur aliquando petere debitum. Certum est primo, ordinarie non teneri uxorem ad petendum, quia hoc est mulieribus notabiliter inverecundum. Certum secundo, quod, cum alter conjux est in periculo incontinentiæ, tam vir quam uxor teneatur petere ad liberandum alterum a periculo. Ita communiter Pontius l. 10. c. 2. num. 3. Sanch. l. 9. d. 2. n. 9. cum Soto, Adr. etc. ac. Boss. c. 1. n. 17. cum Filliuc. Heur. etc., Sed dubium fit, an teneatur uxor tunc

Sanchez, &c., universally hold from St. Thomas, where he says, "When the husband perceives from any signs that the wife wishes the debt to be paid, but on account of her modesty is silent, he is bound to pay the debt." On the contrary Sanchez, &c., rightly say, according to the same St. Thomas, that the wife is not bound to pay the debt to the husband unless he expressly demands it, for since the husbands are not ashamed expressly to demand, wives may well presume that husbands not expressly demanding are unwilling to oblige the wives to demand; nay, I am of opinion that they are not able, inasmuch as the husband cannot bind the wife, to demand it, with all her blushing modesty. It is however rightly excepted by Sanchez, and others unless such bashfulness (but which seldom happens) should be presumed to be on the part of the man, rather than that of the woman, as for instance, if she happened to possess greater authority (that is, *wear the breeches*) or be of a fierce disposition, and the husband should happen to be very pusillanimous and bashful. But Sanchez very properly suggests, that as a general rule, the wife is not bound to pay the debt, unless this pusillanimity and shame on the part of the husband, are very evident to her.—*Lig.* vol. 6, n. 928.

It is asked 2nd, whether the wife is sometimes bound to demand the debt. It is certain in the first place, that the wife is not *ordinarily* bound to demand the debt, because this is notoriously immodest on the part of women. It is certain in the second place that when either husband or wife is in danger of incontinence, they are both equally bound to demand the debt, in order to free the other from the danger. Thus commonly Pontius, &c., think. But it becomes a doubt whether the wife

petere ex caritate, vel ex justitia. Prima sententia, quam tenent Pont. 1. c. et Boss. n. 21. cum Led. Henr. Diana et P. Soto dicit teneri ex justitia. Ratio, quia cum teneantur conjuges servare bonum fidei, quando alter est in periculo incontinentiæ, tunc esto non petat alter, ipsa tamen necessitas petit, ut bonum fidei servetur vitando alterius incontinentiam; ideoque tunc potius est redditio, quam petitio debiti. Confirmatur exemplo: si enim medicus teneatur ex contractu moderi ægroto, tenetur ex justitia exhibere ei medicinam, quamvis ille non petat. Secunda vero sententia, quæ videtur probabilior: et quam tenent Sanchez dict. d. 2. num. 7. cum Pal. et Durando, ac Con. apud Boss. n. 22, dicit teneri tantum ex caritate. Ratio, quia, ubi nulla est petitio alterius conjugis expressa vel tacita, nulla adest obligatio justitiæ ad reddendum. Ad bonum autem fidei matrimonii spectat quidem, ut conjux non adulteretur, non vero ut avertat alterum ab adulterio; licet enim hoc etiam quodammodo pertineat ad bonum fidei, non tamen ita pertinet, ut stricte obliget ex justitia ad petendum: ideo a D. Thoma hujusmodi petitio non dicitur absolute redditio, sed quædam redditio debiti; et hoc adducit S. doctor tantum ad excusandum petentem, si petat ad vitandam incontinentiam in altero, non vero ad obligandum ut petat. Nec obstat exemplum medici; medicus enim tenetur utique præbere medicinam infirmo non petenti, quia, ex contractu se obligavit ad eum curandum: conjux autem se obligavit ad non frangendam fidem, non vero ad impediendum alterum quominus fidem frangat. Ex hac sententia infertur quod conjux, cum non teneatur ex justitia, sed tantum ex caritate eo casu ad petendum, non teneatur petere cum magno incommodo;

be in that case bound to demand it from charity or from a sense of justice. *The first opinion* which is held by Pontius, &c., declares they are bound so to do from a sense of justice. The reason is, because married parties are bound to observe good faith when one is in danger of incontinence; in that case although the other does not demand, still necessity itself requires that good faith should be observed in avoiding the incontinence of the other, and therefore in that case it is a *rendering* rather than a *demanding* of the debt. This is confirmed by example—for if a physician is bound by contract to heal the sick, he is bound in justice to offer him medicine although the patient may not demand it. But the *second opinion*, which seems *more probable*, and which is maintained by Sanchez, &c., affirms that they are bound only by charity. The reason is, that when there is no petition, express or tacit, on the part of either, there is no obligation of justice to pay the debt. But it belongs indeed to the good faith of matrimony, that the husband should not commit adultery, but *not that he should avert the other from adultery*; for although this also may in some measure pertain to good faith, it does not, however, so far pertain that it should strictly oblige from a sense of justice to demand; and on that account a demand of this kind is not said by St. Thomas to be absolutely a *rendering* but only a *certain rendering* of the debt; and this is adduced by the holy Doctor only to excuse the party demanding, if he demands it in order to avoid incontinence in the other, but not to oblige him to demand it. Nor does the instance of the physician militate against this, for the physician is bound, as it were, to supply medicine to the sick man, although not demanding it, because according to

hinc probabiliter tunc excusatur uxor a petendo, si in hoc magnam verecundiam subire deberet.—*Lig.* tom. 6, n. 929.

“Quærit. III. an conjux prohibitus a petendo ratione voti, vel affinitatis, aut cognationis spiritualis post matrimonium contractæ, possit quandoque licite exigere debitum? Id admittunt communiter DD. cum Sanchez 1, 9. d. 7, n. 5 (qui citat J. Andr. Præpos. Adrian, Victor. etc.) si adsit periculum incontinentiæ in altero conjuge. Imo dicunt Boss. c. 1. n. 261, et Idem Sanch. n. 11. cum Sot. Henr. Palac. Angles. etc. tunc teneri petere, quia hæc obligatio oritur ex ipsa institutione matrimonii. Idem admittunt etiam communiter S. Thom. in 4. d. 38. q. 1, a. 3. q. 2. ad 4. Boss. c. 1. n. 261, et idem Sanchez d. 8. n. 1. cum Sa, Syl. Ang. Turrecr. Henr. Led. etc. posse conjugem impeditum petere, si alter interpretative exigat, nempe quando mulier (ut ait Thomas) verecunda est, et vir sentit ejus voluntatem de debiti redditione. Tunc enim potest conjux impeditus se offerre, quia tunc potius est reddere, quam petere. Quoties autem liceat ei se offerre? Led. apud Sanch. dicit hoc licere quater in mense; sed melius Boss. num. 260. et idem Sanch. cum Victoria, dicunt id ex circumstantiis esse pensandum, nempe ex majori vel minori propensione alterius ad venerem. Censent autem idem Boss. n. 263, et Sanch. n. 2. cum Angel. non licere marito

his contract he has bound himself to cure him; but the married party has bound himself only *not to break* his own contract, *but not* to prevent the other from violating his or her contract. From this opinion it is inferred, that the married party, since he is not bound by justice, but only by charity, in that case to make the demand, is not bound to demand at great inconvenience; hence then, probably, the wife is excused from making the demand, if in this she is obliged to suffer from great bashfulness.—*Lig.* vol. 6, n. 929.

It is asked, 3rd, whether a husband prohibited from demanding by reason of a vow, or of affinity, or spiritual kindred contracted after matrimony, can, at any time, lawfully demand the debt? This is commonly admitted by divines, together with Sanchez, &c., if there should exist any danger of incontinence in the other partner. Nay, it is said by Boss, &c., that they are then bound, inasmuch as this obligation arises from the very institution of marriage. The same thing is also commonly admitted by St. Thomas, &c., viz., that the husband, although prohibited, may make the demand if the other requires it by signs; namely (as says St. Thomas), *when the woman is bashful, and the husband perceives her desire concerning the rendering of the debt.* For then the husband, although debarred, may offer himself, because it is then better to pay the debt than to ask it. But how often can it be lawful for him to offer himself? Sanchez and others say that this is allowable *four times in a month.* But with more propriety, Boss, and the same Sanchez, &c., say, that that is to be considered *according to circumstances*, namely, according to the greater or lesser propensity of either to venereal pleasures. But Boss, &c., think that it



voto impedito se ad coitum offerre, quando uxor ei concessit licentiam vovendi castitatem, quia tunc censetur ipsa cessisse jure suo, nempe quod vir in ejus gratiam debitum petat; nisi (excipiunt Sanch. et Bossius, contra Coninck. et Pal.) uxor esset in periculo incontinentiæ, quo casu dicunt quod vovens teneatur petere ex obligatione orta, ut supra dictum est ex ipsa institutione matrimonii.

“An autem liceat petere conjugii impedito si ipse sit in periculo incontinentiæ? Affirmant Viguerius, et Quintanady, apud Boss. num. 262. maxime si ille esset impeditus ratione affinitatis vel cognationis spiritualis, et commode non posset haberi dispensatio, essetque periculum in mora, quia lex ecclesiastica in tanto discrimine non obligat. Negant vero Sanch. num. 7. cum Guttier et Covarr. Bossius n. 262. cum Coninck. etc. quia periculum incontinentiæ est quidem justa causa dispensandi, non autem coeundi. Sed prima sententia respectu ad impedimentum ab Ecclesia impositum, mihi non videtur improbabilis, si revera dispensatio brevi obtineri nequeat, et magnum periculum sit in mora.”—*Liq.* tom. 6. n. 930.

is not lawful for a husband, while prohibited by a vow, to offer himself for copulation, since the wife had conceded to him permission to vow chastity, because then she is herself considered to have ceded her rights, that is, that the husband should demand the debt on her account; unless (as is excepted by Sanchez, &c.) the wife were in danger of incontinence; in which case, say they, the party vowing is bound to demand from the obligation arising from the very institution of marriage itself.

But is the husband thus debarred permitted to demand, if he himself is in danger of incontinence? This is affirmed by Viguerius and others, more especially if he should be debarred by reason of affinity, or spiritual relationship, and a dispensation could not conveniently be had, and there should be danger in delay, because in so great an emergency the ecclesiastical law is not obligatory. But this is denied by Sanchez, &c., because danger of incontinence is indeed a just cause of dispensation, but not of copulating. But the first opinion, in respect to the impediment imposed by the Church, does not seem to be improbable, if in reality a dispensation cannot be obtained in a short time, and there should be great danger in delay.—*Liq.* vol. 6, n. 930.

### ON THE SIN OF ER AND ONAN.

Variis modis peccari potest contra bonum prolis, scilicet Io peccant viri, qui committunt peccatum Er et Onan, quos quia rem hanc detestabilem fecerunt, interfecit Dominus.—*Genesis.* 38.

2d. peccant uxores, quæ potionibus foetus conceptionem impediunt, aut susceptum viri semen ejiunt. vel ejicere conantur.—*Dens,* tom. 7, p. 147.

Sin can in various modes be committed against the good of the offspring. Firstly, the men sin who commit the sin of Er and Onan, whom, because they did this detestable thing, the Lord slew.—*Gen.* 38.

Secondly, the wives sin who prevent the conception of the foetus with potions, or eject, or endeavour to eject, the seed received from the man.—*Dens,* v. 7, p. 147.

Notent hic Confessarii, quod conjugati, ne proles nimium multiplicetur, aliquando committunt detestabilem turpitudinem, in similitudinem Er et Onan, circa quod peccatum examinandi sunt.—*Dens*, tom. 7, p. 153.

Quær. III. an peccant mortaliter conjuges, si incepta copula cohibeant seminationem.

R. Si conjuges ambo in hoc consentiunt, nec adsit periculum seminandi extra vas, id per se loquendo non est mortale; illa enim penetratio vasis feminei tunc reputatur instar tactus verendorum, qui inter conjuges permittitur, vel saltem non est mortalis, secluso periculo pollutionis. Ita communiter S. Anton. 3. p. tit. 1, c. 20 § 6. Pont. 1. 10, c. 11. num. 9. Less 1. 4, c. 3, n. 55. Sporer. num. 490. Salm. c. 15, num. 82, cum Aversa, et Dic. Bos. c. 9, n. 58, cum Fill. Hurt et Perez, ac Sanch. lib. 9. d. 19, n. 3, cum Pal Cajet. Ang. Sa, Arm. Tasi. etc. Dixi 1, *si ambo consentiunt*; nam, si alter se retrahit sine alterius consensu, certe graviter peccat, ut dicunt omnes AA. præfati. Dixi 2, *per se loquendo*; nam sapienter advertit Sanchez 1. c. cum Veracruz, id ordinarie esse mortale, quia ordinarie adest periculum ex tali retractione effundendi semen, nisi conjuges experti sint oppositum; quo casu tamen puto nullo modo posse eos excusari saltem a veniali, quidquid dicat Sanch. ib. cum aliis.

Si vero femina jam seminaverit, vel sit in probabili periculo seminandi, non potest quidem vir data opera, a seminatione se retrahere, sine gravi culpa, quia tunc ipse est causa, ut semen uxoris prodigatur, communiter dicunt S. Anton. 1. c. Salm. n. 81. cum Caj. Anj. Sa, et alii passim. Hoc tamen non erit ita intrinsece malum, ut aliquo casu permitti non possit, puta

Here let the Confessors take notice, that the married, lest their children should multiply too fast, sometimes commit a detestable turpitude like that of Er and Onan, about which sin they are to be examined.—*Dens*, v. 7, p. 153.

It is asked, III., whether married persons sin mortally, if, after having commenced the act of copulation, they refrain from spending?

*Answer.* If both parties consent, and there be no danger of spending *outside* the vessel, that, speaking of itself, is not a mortal sin—for such entrance into the female vessel is then considered in the same light as touches of the private parts, which are permitted among married persons, or at least is not mortal sin, the danger of pollution being avoided. Thus generally, St. Antoine, &c.

I have said, first, if both parties agree; for if one withdraws without the consent of the other, he certainly sins grievously, as is asserted by all the aboved cited authors.

I have said, secondly, speaking of itself, (for it is wisely observed by Sanchez, &c.) that this is ordinarily mortal sin, because generally from such withdrawal there is danger of spilling the seed, unless the contrary has been experienced by the married parties; in which case, however, I think that they can in no way be excused, at least from venial sin, whatever may be said by Sanchez and others.

But, if the woman has already spent, or is in probable danger of spending, the husband cannot indeed withdraw himself from spending without heinous sin, because in that case he himself is the cause that the seed of the wife is wasted, as is generally said by St. Anton, &c. This, however, will not be so intrinsically bad, that it cannot, in any case, be permitted: for instance, if the man

si vir desisteret a copula ob periculum mortis, vel scandali aliorum, tunc enim licite potest se retrahere etiam cum periculo pollutionis, quia hæc per accidens, et præter intentionem eveniret, et contra non tenetur cum periculo tanti damni generationem procurare. Ita communiter Sanchez d. num. 4. Pal. num. 5. Salm. n. 81, cum Cajet Dicast. Henr. Hæc sent certa apud omnes.

Si autem vir jam seminaverit, dubium fit, an femina lethaliter peccet, si se retrahat a seminando; aut peccet lethaliter vir non expectando seminationem uxoris. *Prima sententia* affirmat, et hanc tenent Aversa, et probabilem putat Diana part 5, tr. 14. r. 37, atque videtur cohærere Tabien et Arm. apud Sanch. l. 9. d. 19. n. 5, dum indistincte dicunt esse mortale, si altero seminante conjux a seminatione se retrahit. Ratio, quia, ut aiunt, etiam semen mulieris active concurrat ad generationem, prout censent ex medicis Hippocrates, Gallenus, Valesius, et Petrus Matha ap. Sanch l. 2, d. 21, n. 11, et ex theologis Suar, t. 2, in 3. p. d. 10. sect. l v. Secundo infertur, ubi ait: Semen maternum simpliciter necessarium est ad concipiendum filium. Item B. Bonav. et Major ap Boss, d. n. 60, ac. Caj. Abul, et plures alii ap Sanch. l. c. et ipsi Sanc. et Boss. hanc opinionem satis probabilem putant; saltem, ait Bossius, semen mulieris juxta omnes valde confert prolis perfectioni, cum ad hoc saltem fuerit a natura institutum. Secunda vero sententia communior negat; et hanc tenent Sanch. l. 9. d. 19. num. 5. Pont. l. 10, c. 11. n. 2, cum Caj. Henr. Dic. Veracr. etc. Hi contrario nituntur fundamento, nempe quod semen mulieris non sit necessarium ad generationem, ut asserunt Aristoteles, Avicenna, Galenus sibi contrarius,

should desist from copulation from danger of death or scandal to others; for in that case he may lawfully withdraw himself, even at the risk of pollution, because this would happen by accident, and contrary to his intention; and, on the other hand, he is not bound, with danger of so much injury, to procure generation. Thus Sanchez, &c. These things are agreed upon by all.

But if the husband has already spent, it is doubtful whether the female commits a mortal sin if she withdraws from spending, or whether the husband commits a mortal sin by not waiting for the spending of the wife. The *first opinion* affirms this, and is maintained by Aversa, and is thought probable by Dian, and others, who seem to agree, while they indistinctly say that it is a mortal sin, if one party having spent, the other withdraws from spending. The reason is, because, as they say, the seed, even of the woman conduces actively to generation, as is the opinion of Hippocrates, Galenus, &c. among physicians; and of Suarez among theologians. In the second place it is inferred, when he says "The mother's seed simply is necessary for conceiving a son; also Bon. &c., think this opinion exceedingly probable; at least, says Bossius, the woman's seed, according to all, conduces greatly to the perfection of the offspring, since it was at least instituted for this purpose by nature. The *second opinion*, which is more common, denies it, and this is maintained by Sanch. &c. These rest on a contrary foundation, namely, that the seed of the woman is *not* necessary for generation, as is asserted by Aristotle, Avicenna, Galenus, (who contradicts himself) and Sanchez, who affirms this to be the *common opinion of theologians*.\*

\* What under the sun have Theologians to do with these matters?

ac Hugo Senensis, et Alb. M. ap. Sánchez l. 9, d. 17, n. 2, qui ait hanc esse sententiam communem theologorum, exceptis Scotistis. Nec obstare dicunt AA. hujus secundæ sententiæ, quod semen feminae conferat perfectioni prolis; nam respondent quod non teneantur conjuges ad convenientiorem modum generandi, sed satis sit, si generationi non obstant. Quamvis autem dicant præfati AA. non teneri virum expectare seminationem mulieris, si ipse jam seminaverit, concedunt tamen ei posse continuare copulam, usque dum seminet femina, quia hoc pertinet ad complementum copulæ uxoris, ut censent Pontius est Dian. ll. cc. Bonac. n. 14, cum Tab et Graff, contra Henriq. (ap. Bon. l. c.) qui sentit virum non teneri expectare seminationem feminae, quia periculum est ut hoc pacto impediatur generatio, quod non videtur satis probabile, nec cõhærens; nam, si adesset tale periculum, non debuisset dicere non teneri, sed non posse, quod nemo asserit; nemo enim hoc periculum supponit.

Sed redeundo ad primam questionem, esto secunda sententia sit quidem communior, et probabilior, ut videtur, censeo tamen cum Boss. l. c. n. 52, primam sententiam esse satis probabilem, et ideo in praxi tenendam. Hinc neque practice probabile puto id quod dicunt Sanch. num. 5, et Spor. n. 491, cum Perez, Escob. Dic. et Gobato, nimirum posse mulierem in actu coitus animum ad alia divertere, ne concitetur ad seminationem.—*Lig. t. 6, n. 918.*

An autem, si vir se retrahat post seminationem, sed ante seminationem mulieris, possit ipsa statim tactibus se excitare ut seminet?

Negant auctor addit. ad Wigandt. t. 16, post n. 106, ac Dian. et Rodr. ap. Boss. l. 9, n. 54, adhæretque

except the Scotists. Nor is it any obstacle, say these authors of this second opinion, that the seed of the female conduces to the perfection of the offspring, for they answer that married persons are not bound to the more convenient mode of generation, but that it is sufficient if they do not oppose generation. Although the above mentioned authors say that a husband is not bound to wait for the spending of the wife, if he himself has already spent, they, however, allow that he may continue copulation until the woman spends, because this tends to the completion of the copulation of the wife, as is the opinion of Pont. &c., in opposition to Henriq., who thinks that the husband is not bound to wait for the spending of the wife, because there is danger that in this manner generation may be impeded, which does not seem sufficiently probable nor consistent; for, if there existed such danger, he ought not to have said they were not bound, but that they were not able,—which no one asserts, for no one supposes this danger.

But, in returning to the first question, granted that the second opinion may be more common and more probable, as indeed it seems, yet I think with Boss. that the first opinion is sufficiently probable, and on that account *to be observed in practice*.—Hence, I do not think that practically probable, which is affirmed by Sanch. and others, viz., that a woman can, in the act of copulation, divert her mind to other objects, in order that she may not be excited to spend.—*Lig. v. 6, n. 918.*

But, if the husband withdraws after spending, but before the wife has spent, can she immediately, by touches, excite herself in order to spend?

This is denied by the author of the "Addit. ad Wigandt." &c., and this is agreed by Pal. saying, that is un-

Pal. p. 4. § 3. n. 6, dicens id non esse licitum, si mulier posset se continere. Ratio, quia semen mulieris non est necessarium ad generationem; item quia effusio illa mulieris, utpote separata, non fit una caro cum viro. Communius vero affirmant Wigandt. tr. 116, n. 103. v. Solve, Less l. 4, c. 3, n. 94. Bon. q. 4, p. 6, n. 17, in fin. cum Sanchez, lib. 9, d. 17, n. 10. Pot. t. 1, c. 4, n. 44 10. Tamb. Dec. l. 1. c. 3. § 5 n. 18. Salm. c. 15. n. 80. in fin. cum Dic. Filiuc. tr. 10, n. 330. Sporer, n. 491. Boss. c. 9, n. 55, cum Aversa, Perez, Fagund. et Leandr. ac Elb. p. 479, num. 425, cum Cleric. Hom. Dian. Gob. et Bosco, et non reprobatur Conc. cin. p. 406, n. 11. Ratio, tum quia seminatio mulieris pertinet ad complendum actum conjugalem, qui consistit in seminatione utriusque conjugis; unde, sicut potest uxor tactibus se præparare ad copulam, ita etiam potest actum copulæ perficere, tum quia, si mulieres saltem post irrationem tenerentur naturam compescere, essent ipsæ jugiter magno periculo expositæ peccandi, cum frequentius viri, quia calidiores, prius seminant (sed hæc ratio non suadet; nam si hoc permetteretur uxoribus, deberet permitti etiam viris, casu quo mulier post suam seminationem se retraheret, et vir maneret irritatus; at DD. communiter dicunt id vetitum esse viris, ut Sanchez, n. 10, Wigandt. et Bonac. l. c.); tum quia, ut plures sentiunt, seminatio mulieris est necessaria, vel saltem multum confert ad generationem: nihil enim a natura frustraneum agitur. Omnes autem concedunt uxoribus, quæ frigidioris sunt naturæ, posse tactibus se excitare ante copulam, ut seminant in congressu maritali statim habendo. Vide Conc. n. 13.—*Lig.* t. 6, n. 919.

lawful if the woman could contain herself. The reason is, because the woman's seed is not necessary for generation; also, because that effusion of the woman, inasmuch as it is *separate*, does not become one flesh with the husband. It is, however, more generally affirmed by DIVINES, (that she may *in this manner* perfect the act.) The reason is, both because the woman's spending tends to perfect the conjugal act, which consists in the spending of both parties; consequently, as the wife may by touches prepare herself for copulation, so also may she perfect the act of copulation; and also, if women were bound, at least after irritation, to restrain nature, they would in like manner themselves be exposed to great danger of sinning, since generally the husbands, being of a hotter nature, spend first;—(but this reasoning is not conclusive, for if this were permitted to the wives, it ought to be permitted also to the husbands; in which case, the woman, after spending herself, might withdraw, *and the husband remain in a state of irritation*; but the doctors commonly say that that is forbidden to the husbands, as Sanchez, &c.) And also because, in the opinion of many, the woman's spending is necessary, or at least greatly conduces to generation; for nothing is done in vain by nature. But all concede to the wives, who are of a colder nature, *that they may by touches* excite themselves before to copulation, in order that they may spend immediately on the marital encounter taking place. See Conc. n. 13.—*Lig.* v. 6, n. 919.

The reader is requested to observe, in the Latin column of the foregoing extract, the long list of Divines who have written elaborate treatises on this most perplexing *theological* topic. Such matters appear to be more con-

genial to the tastes of Roman Catholic "Saints," than the dry subjects which generally occupy the attention of Protestant Divines, viz., The Evidences of Christianity, Proofs of Revelation, The Doctrine of the Trinity, &c.

Ne Confessarius hæreat iners in circumstantiis alicujus peccati indagandis, in promptu habeat hunc circumstantiarum versiculum:—

Lest the Confessor should indolently hesitate in tracing out the circumstances of any sin, let him have the following versicle of circumstances in readiness:—

Quis,\* quid, ubi, quibus auxiliis, cur, quomodo, quando.—*Dens*, tom. 6, p. 123.

### ON THE CARNAL SINS WHICH MAN AND WIFE COMMIT WITH ONE ANOTHER.

Certum est, conjuges inter se peccare posse, etiam graviter contra virtutem castitatis, sive continentiæ, ratione quarundam circumstantiarum; in particulari autem definire, quæ sunt mortales, quæ solum veniales, perobscurum est, nec eadem omnium sententia; ut vel idco soli-

It is certain that man and wife can sin grievously against the virtue of chastity, or continence, with regard to certain circumstances relating to the use of their bodies; but to define particularly what are mortal, what only venial, is a matter of very great difficulty, nor are all

\* *Quis*. So concise is this versicle of circumstances, that it baffles all attempts to translate it literally. The following lines, however, as will appear from *Dens*' own explanation, which I shall immediately subjoin, sufficiently convey the meaning to the English reader:—

Her state, married or single, the sinner shall tell,  
The sin, when and where, th' auxiliaries by which she fell,  
The motive that led her, and the posture she chose;  
For absolution to fit her, she must these disclose.

By the word "*Quis*," we are told (vol. I, p. 257,) is meant that the priest should know the quality or condition of the penitent, whether wife, maid, or widow, &c.

By "*Quid*," the *quantity, quality, and effect* of the act.

By "*Ubi*," the accidental quality of the place,—whether sacred or profane, public or private, at home or abroad; and here *Dens* takes occasion to say, that carnal sins, as fornication, &c., committed in the conversation-room, or garden, of a monastery, should not, on that account, be considered sacrilegious; from which it appears that, in religious communities or societies, the conversation room and garden enjoy important privileges. (*Si præfata peccato committerentur in locutorio aut horto monasterii non inde contraherent malitiam sacrilegii.*) In the 4th volume, p. 377, the same privileges are extended to the oratories, chambers, cells, and other buildings within the precincts of a monastery.

By "*Quibus auxiliis*," with what assistance or accomplices.

By "*Cur*," with what motives—the why and wherefore.

By "*Quomodo*," the accidental mode or manner in which the action has taken place. This includes *all* the positions.

By "*Quando*," the *quality and quantity, or duration* of time.

The above circumstances are then summed up, and exemplified in the following chaste and edifying corollary:—"John, the keeper of the church, long intending to commit fornication with Anna, having called in his accomplices, violently snatches from the hands of the priest, in the church, the consecrated chalice of gold, in order that he may have money to commit the fornication with her, in consequence of which the people were not able to hear mass on the holy day. Tell how many and what circumstances intervene in this case?"

cite persuadendum sit conjugatis, ut recordentur se esse filios Sanctorum, quos decet in sanctitate conjugali filios procreare. Quidam auctores circumstantias circa actum conjugalem præcipue observandas, expriment hinc versibus:—

“ Sit modus, et finis, sine damno,  
solve, cohære.  
Sit locus et tempus, tactus, nec  
spernito votum.”

writers of one opinion on the subject; so that, even on that account, the married ought to recollect that they are the children of the saints, and should therefore beget children in conjugal sanctity. The circumstances which are chiefly to be observed in the conjugal act, some authors express in the following verses:—

“ Let the posture be such as best  
suits the great end,  
For which nature ordains that the  
sexes shall blend.

Without loss to the parties engage  
in the task,  
To the wife, or yourself, or the babe  
in the cask.

The debt duly pay when your vig-  
our's excited,  
By touches well aimed till your mar-  
row's ignited.

A place being selected your powers  
to expend,  
In close embrace cohere till you per-  
fectly spend.

The time also deserves some trifling  
attention,  
But of flour and births I've already  
made mention.

If to chastity bound, to the act  
don't entice,  
But when tempted to yield, fall to  
work in a trice.”

Latin scholars will acknowledge the utter impossibility of translating these two lines literally; but English readers may think it strange that two lines of Latin cannot be translated into an equal number of lines in English. Therefore, to satisfy the minds of such persons, the compiler hereby offers the sum of two guineas to any person who will supply him with a good literal translation of the above passage in two lines, either in prose or verse.

N. B. Priests as being most conversant with the subject are invited to compete.

“ Ergo debet servari modus, sive  
situs, qui dupliciter invertitur, Io.  
ut non servetur debitum vas, sed  
copula habeatur in vase præpostero,  
vel quocumque alio non naturali;

Therefore manner or posture  
ought to be observed, which is in-  
verted in a two-fold way: first, when  
the proper vessel is not kept, but the  
connection takes place in the hinder

quod semper mortale est spectans ad sodomiam minorem, seu imperfectam, idque tenendum contra quosdam laxistas, sive copula ibi consummetur, sive tantum inchoetur consummanda in vase naturali.

Modus sive situs invertitur, ut servetur debitum vas ad copulam a natura ordinatum, v. g. si fiat accedendo a præpostere, a latere, stando, sedendo, vel si vir sit succubus. Modus is mortalis est, si inde suboritur periculum pollutionis respectu alterius, sive quando periculum est, ne semen perdatur, prout sæpe accidit, dum actus exercetur stando, sedendo, aut viro succumbente; si absit et sufficienter præcaveatur istud periculum, ex communi sententia id non est mortale: est autem veniale ex gravioribus, cum sit inversio ordinis naturæ; est que generatim modus ille sine causa taliter coeundi graviter a Confessariis reprehendendus: si tamen ob justam rationem situm naturalem conjuges immutent, secludaturque dictum periculum, nullum est peccatum, ut dictum est in numero 48.

vessel, or in any other not ordained by nature for that purpose, which is always a mortal sin, tending to that which is called minor or imperfect sodomy; and this must be held against certain Divines of loose opinions,\* whether the connection be consummated there (in the improper passage), or be only begun there to be consummated in the natural passage.

Manner or posture is inverted, though the connection takes place in the vessel appointed by nature for that purpose: for instance, if it be done from behind, or when the parties are on their sides, or standing, or sitting, or when the husband lies underneath. This method of doing it is a *mortal sin*, if there should therefrom arise to either party a danger of pollution, or of losing the seed, a thing which often happens† when the act is performed standing, or sitting, or the husband lying underneath; but if that danger be sufficiently guarded against, it is not, in the common opinion of Divines, a mortal sin; yet it is one of the weightier sort of venial sins, since it is an inversion of the order of nature; and in general, that method of thus coming to coition must, when without sufficient cause, be severely censured by the Confessors. If, however, man and wife, for some just reason, change the natural posture, and if the aforesaid danger (of losing the seed) be secluded, there will be no sin, as has been said in number 48.

\* We are also told, in another part of the same volume, that the wicked wretch who invades his father's bed, and commits incest with his step-mother, is not so guilty in the eyes of the Church as the man who circulates the Bible. The latter "is excommunicated with an excommunication reserved to the Supreme Pontiff;" whilst the offence of the former does not constitute even a reserved case—"Incestus privigni cum noverca non reservatur." (Vol. 6, p. 287). Nothing is so "atrocious" as Protestantism—neither incest or sodomy.

† Often happens? How did he know? There is nothing done, it appears, that can escape the knowledge of the priest: he knows the secrets of young and old; he can tell the real father of every child in the parish—nay, the very attitude in which each was begotten, and the words with which each embrace was given! and yet, in this very sentence, these *prurient inquisitors* are called "Divines."



Minuitur periculum perdendi semen, si verum sit, quod dicunt Sanchez, Billuart, et Preinguez, scilicet quod in matrice sit naturalis vis attractiva seminis, ut in stomacho respectu cibi.

Debet finis esse legitimus, de quo et quomodo ratione finis peccari possit, dictum est Num. 51 et sequentibus.

Per particulam "sine damno" importatur cavendum esse damnatum prolis conceptæ et concipiendæ, tum ipsorum congregantium, de quibus egimus Num. 47.

Verbum "solve" importat obligationem solvendi sive reddendi debitum legitime petitum, de qua obligatione diximus Num. 46 et sequentibus.

Per verbum "cohære" intelligitur cohærentia usque ad perfectam copulam, seu seminationem perfectam, ita ut per se mortale sit, inchoatam, copulam abruptere.—*Dens*, tom. 7, pp. 166-7.

Our *bachelor* Saint now expatiates upon the various possible postures, and other delicate matters. We think very few of our *married* friends could compose such a *masterpiece* of matrimonial mysteries.

VI. Si fiat modo indebito, verbi gratia—1. Si non servetur vas naturale: quod multi docent esse veram sodomiam, alii esse grave peccatum contra naturam. Vide 6 præceptum.—2. Si sine justa causa situs sit innaturalis, præposterus, etc. quod aliqui dicunt esse mortale, alii, secluso periculo effusionis seminis, veniale tantum, etsi grave, et graviter increpandum. Dian. part 3, t. 4, res. 204. 3. Si alter conjugum ex morositate, vel alia ratione semina-

The danger of losing the seed is lessened, if that be true, which is said by Sanchez and others, to wit, that the womb has a natural power of attraction with respect to the seed, as the stomach has with respect to meat.

The "end" ought to be legitimate; concerning which, and in what manner the parties may commit sin with regard to the end, we have treated in No. 51, and those following it.

The words "without loss" import that care must be taken that no injury be done to an offspring already conceived, or about to be conceived, or to the parties themselves meeting in the act of coition, concerning which we have treated in No. 47.

The word "pay" imports the necessity of paying the debt when legitimately asked, concerning which we have treated in No. 46, and those following it.

By the word "cohere" is understood the necessity of coherence (or sticking close) till the act of copulation is perfected, or until the parties spend completely; so that it is of itself a mortal sin abruptly to break off, when copulation has been once begun.—*Dens*, vol. 7, p. 166-7.

If it (copulation) takes place in an improper manner; as, for example,—1st, if the natural vessel be not kept, which many teach to be real sodomy; others that it is a real sin against nature. See 6th com. 2ndly, if without just cause the position be unnatural, from behind, &c., which some maintain to be mortal sin; others, danger of spilling seed being avoided, that it is only a venial sin, although grievous and severely to be reprehended, Dian, etc. 3. If one

tionem cohibeat quod quidam generatim dicunt esse mortale, quia finis actus conjugalis, scilicet generatio, impeditur; quidam tamen, ut Præpositi et Sanchez dicunt in femina nullum esse. Vid. Bonac. p. 6, n. 15 et p. 1.—*Lig.* t. 6, n. 915.

Quæretur I. An peccet mortaliter vir inchoando copulam in vase præpostero, ut postea in vase debito, eam consummet. Negant Navarr. l. 5. Consil. de Pœnit. cons. 7, ac Angel, Zerola, Graff. Zenard et Gambac. apud Dian, p. 2, tract 17, r. 37, modo absit periculum pollutionis; quia alias, ut aiunt, omnes tactus etiam venerei non sunt graviter illiciti inter conjugatos. Sed comm. et verius affirmant Sanchez, l. 1. d. 17. num. 5, Pont, lib. 10, c. 11. n. 5. Pal. p. 4. § 2. n. 6. Bonac. p. 11, n. 12. Spor. n. 497. Ratio, quia ipse hujusmodi coitus (etsi absque seminatione) est vera sodomia, quamvis non consummata, sicut ipsa copula in vase naturali mulieris alienæ est vera fornicatio, licet non adsit seminatio. An autem sit mortale viro perficere virilia circa vas præposterum uxoris? Negant Sanchez num. 5, et Boss. n. 175, cum Fill. et Perez, quia tangere os vasis præposteri non est ordinatum ad copulam sodomiticam. Sed verius pariter affirmant Pontius loco citato, Pal. n. 6. Atque Tambur. n. 32. (qui testatur ex aliquibus codicibus sententiam Thomæ Sanch. esse deletam; imo Moyas asserit ipsum Sanchez se retractasse in editione Antuerpiensi anno 1614.) Ratio est, quia saltem talis tactus non potest moraliter fieri sine affectu sodomitico. *Lig.* tom. 6, n. 916.

Quærit II. An et quomodo peccent conjuges coeundo situ innaturali. Situs naturalis est, ut mulier sit succuba, et vir incubus; hic enim modus aptior est effusioni seminis

of the married parties, either from sulkiness or other reason, refrain from spending, which some generally maintain to be mortal sin, because the end of the conjugal act, viz., generation, is impeded; some, however, with Sanchez, say it is no sin in the female.—*Lig.* vol. 6, n. 915.

It is asked, 1st, does a man sin mortally by commencing the act of copulation in the hinder vessel, that he may afterwards finish it in the proper vessel? This is denied by Navarr. &c., provided there be no danger of pollution; because, otherwise, as they say, all touches, even venereal, are not grievously illicit among married persons. But it is commonly and more truly affirmed by Sanchez, &c. The reason is, because the very act of copulation after this manner (even without spending) is real sodomy, although not consummated, just as copulation itself in the natural vessel of a strange woman is real fornication, though there may be no spending. But is it a mortal sin for a man to rub his — against the hinder vessel of the wife? This is denied by Sanchez, &c., because to touch the mouth of the hinder vessel is not ordained for sodomical copulation. But it is more truly affirmed by Pontius, &c., and also by Tambur. who testifies that the opinion of Sanchez has been expunged from some books. Nay, Moyas asserts that Sanchez himself had retracted, in the Antwerp edition, anno 1614. The reason is, that such touch cannot morally take place without affecting sodomy.—*Lig.* vol. 6, n. 916.

It is asked, 2ndly, whether, and in what manner, married parties sin by copulating in an unnatural posture? The natural posture is for the woman to lie under the man, be-

virilis, et receptioni in vas femineum ad prolem procreandam. Situs autem innaturalis est, si coitus aliter fiat, nempe sedendo, stando, de latere, vel præpostere more pecudum, vel si vir sit succubus, et mulier incuba. Coitum hunc, præter situm naturalem, alii apud Sanchez, l. 9, d. 16, num. 2 generice damnant de mortali; alii vero dicunt esse mortale ultimos duos modos, dicentes ab his ipsam naturam abhorrere. Sed communiter dicunt alii omnes istos modos non excedere culpam venialem. Ratio, quia ex una parte, licet adsit aliqua inordinatio, ipsa tamen non est tanta, ut pertingat ad mortale, cum solum versetur circa accidentalialia copulæ; ex alia parte, mutatio situs generationem non impedit, cum semen viri non recipiatur in matricem mulieris per infusionem, seu decensum, sed per attractionem, dum matrix ex se naturaliter virile semen attrahit. Ita. S. Anton. 3, p. tit 2, c. 2. § 3. in fine, cum Alb. M. Nav. c. 16, n. 42. Pont. l. 10, c. 11, num. 1. Petroc. t. 4, p. 445. v. Tertius casus, Salm. c. 15, n. 73. Boss. c. 7, n. 68. Hol. n. 458. Sporer. n. 493. Ronc. p. 184, q. 4, &c.—*Lig.* t. 6, n. 917.

cause this posture is better adapted for the effusion of the man's seed, and its reception into the female vessel, for the purpose of procreation. But an unnatural position is, if coition takes place in a different manner, viz., sitting, standing, lying on the side, or from behind, after the manner of cattle, or if the man lies under the woman; such coition, contrary to the natural posture, some, with Sanchez, &c., generally condemn as mortal sin; others maintain that only the two last modes are mortal sin, affirming these to be repugnant to nature itself; but others commonly say that all these modes do not exceed venial sin. The reason is, because, on the other side, although there may be something inordinate, yet that it is not so great as to amount to mortal sin, inasmuch as it is applied only to the accidentals of copulation; on the other side, change of posture does not impede generation, since the man's seed is not received into the matrix of the woman by infusion, or descent, but by attraction, whilst the matrix of itself naturally attracts the man's seed. Thus St. Anton., &c.—*Lig.* vol. 6, n. 917.

### TOUCHES, LOOKS, AND FILTHY WORDS.

We now give a few extracts on the above subjects, which the ingenuity of very fiends could not surpass. Yet it is for teaching this filth that Maynooth College receives a Parliamentary Grant of £30,000 a year. We hope the days of that iniquitous grant are numbered. If Oxford, Cambridge, and Dublin are to be interiered with, surely so also may Maynooth.

Quæres an, et quando liceant tactus, aspectus, et verba turpia inter conjuges.

R. Tales actus per se iis licent: quia cui licitus est finis, etiam licent media; et cui licet consummatio, etiam licet inchoatio. Unde

You will ask, whether, and at what times, touches, looks, and filthy words are permitted among married persons?

Ans. Such acts are of themselves lawful to them, because, to whom the end is lawful, the means are also lawful; and to whom the consum-

licite talibus naturam excitant ad copulam. Quod si vero separatim, et sine ordine ad copulam, v. g. voluptatis causa tantum fiant; sunt venialia peccata, eo quod ratione status, quia illos actus cohonestat, habeant jus ad illos: nisi tamen, ut sæpe contingit, sint conjuncti cum periculo pollutionis; aut conjuges habeant votum castitatis, tunc enim sunt mortalia, ut dictum supra l. 3. t. 4. c. 2. d. 4. Dian. p. 3. t. 4. r. 204. et 216. *Lig.* t. 6, n. 932.

#### Unde Resolves.

I.—Conjux venialiter tantum peccat 1. Tangendo seipsum ex voluptate, et tactum non ita expresse referendo ad copulam, ut contra Vasquez et alios probabiliter docet Sanch l. 9. d. 44. 2. Oblectando se veneree sine periculo pollutionis de actu conjugali cogitato, dum abest compars, vel actus exerceri non potest. Fill. Laymann. Tann. Maider cum Dian. p. 3. t. 4. res. 224. contra Nav. Azor. etc.

II.—1. Peccat graviter vidua, quæ se veneree oblectat de copula olim habita; quia est illi illicita per statum. 2. Bigamus, qui in actu conjugali, cum secunda exercito, repræsentat sibi priorem, et de ea carnaliter delectatur, quia est per mixtio cum aliena, Laym. l. 1. t. 9. c. 6.

Quæritur I. an sint mortales tactus et aspectus turpes inter conjuges propter solam voluptatem, sine ordine ad copulam, si non adsit periculum pollutionis. Affirmant S. Antonin. Sylv. Margar. etc. apud Sanchez lib. 9. d. 44. n. 11. quia (ut dicunt) omnis actus venereus,

informatio is lawful, so also is the beginning: consequently, they lawfully excite nature to copulation by such acts. But, if these acts are performed separately and without order to copulation, as, for example, for the purpose of pleasure alone, they are venial sins, because, in respect of the state which renders those acts honourable, they have a right to them; unless, however, as often happens, they are joined with danger of pollution, or the married parties have a vow of chastity, for in that case they are mortal sins, as has been said above.—*Lig.* vol. 6, n. 932.

#### Whence it will be resolved.

I.—A husband commits only venial sin—1st. By touching himself from pleasure, and by not referring the touch so expressly to copulation, as Sanchez more probably teaches, in opposition to Vasquez and others. 2nd. In pleasing himself venereally without danger of pollution, in thinking of the conjugal act, whilst the partner is absent, or the act itself cannot be exercised.

II.—1st. A widow sins grievously when she derives venereal pleasure from copulation formerly had, because such is unlawful to her, in consequence of her state. 2ndly. A person married a second time, who, during the conjugal act, had with the second wife, represents to himself the first, and derives carnal pleasure thereby, because it is pernixture with another woman.

It is asked—1st, whether touches and base looks among married people be mortal sin, on account of pleasure alone, without order to copulation, if there should not be danger of pollution. This is affirmed by St. Anthony and others, because (as they say) every venereal act not

non relatus ad copulam conjugalem est mortalis. Negat vero sententia communis et verior, eamque tenent Laym. l. 3. s. 4. num. 12. Pal. p. 4. § 2. Less. lib. 4. c. 3. n. 125. Bonacina q. 4. p. 8. n. 12. Sporer n. 502. Sanch. dict. d. 44. n. 12. et pluribus aliis. Ratio, quia status conjugalis sicut cohonestat copulam, ita etiam hujusmodi tactus et aspectus etc. Lig. tom. 6, n. 933.

Quærit II. quid, si conjuges ex his turpibus actibus prævideant pollutionem securam in se vel in altero. Plures adsunt sententiæ. Prima sententia, quam tenent Sanch. lib. 9. d. 45. ex n. 34. Fill. tract. 3. c. 9. n. 356. Viva q. 7. art. 4. n. 4. Escob. l. 26. n. 207. Elb. n. 393. cum Herinex, et Spor. n. 500. id excusat ab omni culpa etiam in petente, si pollutio non intendatur, nec adsit periculum consensus in eam, et modo tactus non sit adeo turpis, ut judicetur inchoata pollutio (prout esset digitum morose admove- re intra vas femineum); ac præterea adsit aliqua gravis causa talem tactum adhibendi, nempe ad se præparandum ad copulam, vel ad fovendum mutuam amorem. Ratio, quia tunc justa illa causa tales actus cohonestat, qui alioquin non sunt illiciti inter conjuges; et si pollutio obvenit, hoc erit per accidens. Dicitur si adsit gravis causa; nam, si non adsit, prædicti actus non excusantur a mortali. Secunda sententia, quam tenent Pal. p. 4. §. 2. n. 2. Boss. cap. 7. n. 213. et Sahn. cap. 15. num. 86. cum Soto, Caject. Dec. Hurt. Aversa, et communi, ut asserunt, distinguit et dicit esse mortalia tactus impudicos, si prævideatur pollutio ex eis proventura; quia, cum hi proxime influant ad pollutionem, et non sint per se instituti ad fovendum affectum conjugalem, censentur voluntarii in causa: secus, si sint pudici, ut oscula et amplexus, quia actus isti

relating to conjugal copulation is mortal sin. But *this is denied by the common and more true opinion*, and that opinion is maintained by Laym. and others. The reason is, that as the marriage state renders copulation honourable, so also does it touches and looks of this nature, &c.—Lig. vol. 6, n. 933.

It is asked—II., what if married persons, from these filthy acts foresee pollution about to follow, either in themselves or the other? There exist many opinions. The *first opinion*, which is maintained by Sanchez, exempts that from all sin, even in the person demanding, if pollution be not *intended*, and there be no danger of consenting to it, and provided the touches be not so filthy that they ought to be considered as begun pollution (such as would be to move the finger morosely within the female vessel); and besides there might be some grave cause of applying such touches, viz., for the purpose of preparing one's self for copulation, or for promoting mutual love. The reason is, because in that case the just cause renders such acts honourable, which are not otherwise unlawful among married persons, and if pollution ensues, this will be by accident. It is said, *if there be grave cause for it*; if there be not, the forementioned acts are not excused from mortal sin. *The second opinion*, maintained by Pal. &c., distinguishes and affirms, that unchaste touches are a mortal sin, if pollution is foreseen to proceed from them, because since these proximately lead to pollution, and are not of themselves instituted to promote conjugal affection, they are considered voluntary in effect; otherwise if they are chaste, such as kisses and embraces, because such acts are of themselves lawful among married

per se inter conjuges sunt liciti, cum per se apti sint ad fovendum conjugalem amorem. Tertia sententia, quam tenet Diana p. 6. tr. 7. r. 65. cum Præpos. et Vill. dicit tactus tam impudicos quam pudicos esse mortalia, si prævideatur periculum pollutionis. Ratio, quia ideo tactus licent inter conjuges, in quantum quærentur intra limites matrimonii, in quantum nihil sequitur repugnans fini et institutioni seminis: cum autem prævidetur seminis dispersio, licet non intendatur, qualescumque tactus sunt illiciti.

His sententiis positis, puto probabilius dicendum, quod tactus turpes inter conjuges cum periculo pollutionis, tam in petente quam in reddente sint mortalia, nisi habeantur ut conjuges se excitent ad copulam proxime securam; quia, cum ipsi ad copulam jus habeant, habent etiam jus ad tales actus, tametsi pollutio per accidens copulam præveniat. Tactus vero pudicos etiam censeo esse mortalia, si fiant cum periculo pollutionis in se vel in altero, casu quo habeantur ob solam voluptatem, vel etiam ob levem causam: secus, si ob causam gravem, puta, si aliquando adsit urgens causa ostendendi indicia affectus ad fovendum mutuum amorem, vel ut conjux avertat suspicionem ab altero, quod ipse sit erga aliam personam propensus. *Lig.* tom. 6, n. 934.

An autem sit semper mortale, si vir inmittat pudenda in os uxoris? Negant Sanchez, lib. 9. d. 17. n. 5. et Boss. cap. 7. n. 175. et 193. cum Fill. ac Perez, modo absit periculum pollutionis. Sed verius affirmant Spor. de Matrim. n. 498. Tamb.

parties, since they are naturally calculated to cherish conjugal love. *The third opinion*, maintained by Dian, &c., affirms that touches, both the unchaste and the chaste, are mortal sin, if danger of pollution be foreseen. The reason is, because touches are therefore lawful among married people, in so far as they are sought within the limits of matrimony, or in so far as nothing follows repugnant to the end and the institution of seed; but when the dispersion of seed is foreseen, although not intended, touches of whatsoever nature are unlawful.

These opinions being laid aside, I am of opinion, that it ought more probably to be said, that filthy touches among married people, with danger of pollution, are mortal sins both in the one demanding and in the one complying, unless they are had in order that the married persons may excite themselves to copulation immediately to follow, because, when they have a right to copulation, they have also a right to such acts, although pollution may by accident anticipate copulation. But I am of opinion that even chaste touches are mortal sins, if they are had with danger of pollution either in one's self or in another, in which case they are had solely for pleasure, or even for a light cause; otherwise, if for a grave cause, as, for instance, if there should exist, at any time, urgent cause for showing tokens of affection to cherish mutual love, or that one party may avert suspicion from the other, that he or she is favourably inclined towards another person.—*Lig.* vol. 6, n. 934.

But is it always a mortal sin, if the husband introduces his — into the mouth of his wife? It is denied by Sanchez and others, provided there be no danger of pollution. But it is more truly affirmed by Spor. de Matrim and others, both because in

lib. 7. c. 3. §. 5. n. 33. et Dianna p. 6. tract. 7. r. 7. cum Fagund. tum quia in hoc actu ob calorem oris adest proximum periculum pollutionis, tum quia hæc per se videtur nova species luxuriæ contra naturam (dicta ab aliquibus *irrumatio*): semper enim ac quæritur a viro aliud vas, præter vas naturale ad copulam institutum, videtur nova species luxuriæ. Excipit tamen Sporer 1. c. cum. Fill. et Marchant. si id obiter fiat; et hoc revera sentire videtur etiam Sanch. dum excusat actum illum a mortali, si cesset omne periculum pollutionis. Excipit etiam Pal. p. 4. §. 2. num. 6. si vir hoc faceret, ut se excitet ad copulam naturalem. Sed ex prædictis neutrum admittendum puto. Eodem autem modo Sanchez loc. cit. n. 32 in fin. damnat virum de mortali, qui in actu copulæ immitteret digitum in vas præposterum uxoris, quia (ut ait) in hoc actu adest affectus ad sodomiam. Ego autem censeo posse quidem reperiri talem effectum in actu; sed per se loquendo hunc effectum non agnosco in tali actu insitum. Ceterum, graviter semper increpandos dico conjuges hujusmodi fœdum actum exercentes.—*Lig.* tom. 6, n. 935.

Quær. IV. An sit mortalis delectatio mœrosa in conjuge de copula habita vel habenda, quæ tamen non possit haberi de præsententi. Adsunt tres sententiæ. Prima sententia affirmat; et hanc tenent Pont. lib. 10, c. 16, n. 21, Wigandt. tr. 4, n. 59, Sylv. ac. Vega, Rodriq. et Dic. apud Salm. c. 15, n. 88, qui probabilem vocant. Ratio, quia talis delectatio est quasi inchoata pollutio, quæ, cum eo tempore non possit haberi modo debito, omnino fit illicita. Secunda vero sententia communior negat; eamque tenent Pont. p. 4, q. 8, n. 12. Spor. n. 505. Croix n. 337, cum Suar. et Sanchez, l. 9, d.

this case, owing to the heat of the mouth, there is proximate danger of pollution, and because this appears of itself a new species of luxury, repugnant to nature (called by some, *Irrumatio*), for as often as another vessel than the natural vessel ordained for copulation, is sought by the man, it seems a new species of luxury. However, Spor. and others make an exception, if that be done casually; and, in truth, Sanchez seems to be of this opinion, whilst he excuses that act from mortal sin, should all danger of pollution cease. Pal., also, makes an exception, "if the husband does this to excite himself for natural copulation." But, from what has been said before, I think neither ought to be admitted. In the same manner, Sanchez, condemns a man of mortal sin, who, in the act of copulation, introduces his finger into the hinder vessel of the wife, because (he says) in this act there is a disposition to sodomy. But I am of opinion that such effect may be found in the act; but, speaking of itself, I do not acknowledge this effect natural in the act. But I say that husbands practising a foul act of this nature, ought always to be severely rebuked.—*Lig.* vol. 6, n. 935.

It is asked, Does morose gratification in a married party, respecting copulation had, or to be had, which yet cannot be had for the present, amount to mortal sin?—There are three opinions. *The first opinion* affirms it; and this is maintained by Pont. &c., who call it probable. The reason is, because such gratification is, as it were, begun pollution, which, since it cannot be had at that time in a lawful manner, is altogether illicit. But *the second opinion*, more common, denies this; and this opinion is maintained by Pont. &c. This opinion says that such gratification is not a mortal sin,

44, n. 3, cum S. Anton. Palud Cajet. Viguier. et communi, ut asserit, utque fatetur etiam Pontius, item Coninck., &c., qui etiam probabilem putant. Hæc sententia dicit talem delectationem non esse mortalem, si absit periculum pollutionis, sed tantum venialem. Est venialis, quia ipsa caret debito fine, cum non possit ordinari ad copulam præsentem. Non est autem mortalis, quia delectatio sumit suam bonitatem vel malitiam ab objecto; et cum copula sit licita conjugatis, non potest esse eis graviter illicita illius delectatio. Et huic expresse favet id quod ait D. Thom. de Malo, q. 15, art. 2, ad. 17 ubi: Sicut carnalis commixtio non est peccatum mortale conjugato, non potest esse gravius peccatum consensus in delectationem, quam consensus in actum. Idque admittit Spor. etiamsi habeatur delectatio venerea orta ex commotione spirituum. Tertia demum sententia, quam tenent Salm. d. c. 15, n. 90, distinguit et dicit, quod, si delectatio sit absque commotione spirituum non erit mortalis; secus, si cum commotione et titillatione partium. Ego meum iudicium proferam. Si delectatio habeatur non solum cum commotione spirituum, sed etiam cum titillatione seu voluptate venerea, sentio cum Conc. p. 408, n. 10, (contra Sporer ut supra) eam non posse excusari a mortali, quia talis delectatio est proxime conjuncta cum periculo pollutionis. Secus vero puto dicendum, si absit illa voluptuosa titillatio, quia tunc non est delectationi proxime adnexum periculum pollutionis, etiamsi adsit commotio spirituum; et sic revera sentit Sanchez, l. c. n. 4, cum Vasque cum ibi non excuset delectationem cum voluptate venerea, sed tantum, ut ait, cum commotione et alteratione partium absque pollutionis periculo. At, quia talis commotio propinqua est illi titillationi volup-

if there be no danger of pollution, but only a venial sin. It is venial, because it wants the due end, since it cannot be ordained for present copulation. But it is not mortal sin, since gratification derives its good or bad qualities from the object; and since copulation is lawful for married persons, its gratification cannot be grievously unlawful to them. And this is expressly favoured by what St. Thomas says,—“As carnal intercourse is not a mortal sin to a married person, the consent to gratification cannot be a greater sin than the consent to the act.” And this is admitted by Spor, although the venereal gratification arising from the moving of the passions be had. Lastly, *the third opinion*, maintained by Salm. distinguishes and says, that if the gratification be without moving of the passions, it will not be mortal—otherwise, if accompanied by the moving and titillation of the parts. I will proffer my own opinion: If the gratification be had not only with the moving of the passions, but also with titillation, or venereal pleasure, I am of opinion that that cannot be excused from mortal sin, because such gratification is proximately allied to danger of pollution. I think that the contrary should be said, if it be not attended with that voluptuous titillation, because then danger of pollution is not proximately annexed to the gratification, although it may be attended with the moving of the passions; and so, in truth, think Sanchez, &c., since there he does not excuse the gratification with venereal pleasure, but only, as he says, with the excitement and moving of the parts without danger of pollution. But since such moving is nearly allied to that voluptuous titillation, therefore married couples are to be especially exhorted to abstain from inordinate gra-



tuosæ, ideo maxime hortandi sunt conjuges, ut abstineant ab hujusmodi delectatione morosa. Item advertendum eam esse omnino illicitam in conjuge, qui esset obstrictus voto castitatis, ut dicunt communiter Sanchez, d. d. 44, n. 26, et Boss. c. 7, n. 201, cum Vasq. Fill. et aliis.—  
*Lig. t. 6, n. 937.*

tification of this nature. It is also to be observed that this is altogether illicit in a husband, who is bound by a vow of chastity, as is commonly said by Sanchez and others.—  
*Lig. v. 6, n. 937.*

Dens enters very fully into the same subject in vol. 7, pp. 166-9. As his opinions are identical with those of Liguori, we need not repeat them here.

The following extracts from Liguori require no comment from us. They speak for themselves, and are rather comprehensive as to time, place, frequency, and other *interesting* circumstances:—

VII. Si in loco indebito, v. gr. sacro, qui inde violetur, vel in loco, publico (Vide dicta de hoc puncto lib. 3, num. 485), ubi diximus cum Navarro, Vasq. Tol. Azor. Con. Pont. etc. quod, licet probabile sit, per copulam conjugalem occultam in ecclesia non committi sacrilegium, neque ecclesiam pollui, probabilius tamen est oppositum, nisi adsit necessitas, cum, Suar. Sanch. Less. Bonac. Holzm. Croix, Salm. etc. etsi eo casu non tenenter clerici ibi abstinere a divinis officiis celebrandis, nisi concubitus ille habitus publicetur, ut dicunt iidem auctores et probatur in hoc lib. 6, n. 364, quia ecclesia non censetur polluta quoad celebrationem officiorum, nisi crimen sit notorium notorietate facti.—  
*Lig. tom. 6, n. 920.*

If it (copulation) takes place in an improper place, as, for example, in a consecrated place, which would, in consequence, be defiled, or in public (see what is said on this point, book 3, num. 485) where we have said, with Navarrus, &c., that although it be probable, that sacrilege is not committed in consequence of conjugal copulation in a church, *if kept secret*, and that the church is not polluted; yet the contrary is more probable, unless there be a necessity, although the clergy are not, in that case, bound to abstain from celebrating divine service, unless the copulation there had been made public, as say the same authors, and as is also *proved* in this book 6, n. 364, because the church is not held to be polluted, as regards the celebration of the services, *unless the crime be made notorious through the publication of the deed.*—  
*Lig. vol. 6, n. 920.*

VIII. Si absque urgente causa fiat tempore indebito: 1. In magna solemnitate, ut paschæ, vel pridie communionis. Vid. M. Perez. d. 49, s. 2. 2. Quando uxor est gravida, saltem si sit periculum abortus. Nav. Sylv. Sanch. Conc. Fill. n. 337. Hoc enim si non sit, non erit saltem mortale: quod enim tunc fine suo frustretur semen, non sequitur

If, without urgent cause, it (copulation) takes place at an improper time: 1st. At a great solemnity, as that of the Passover, or the day before communion. See Perez. &c. 2. When the wife is pregnant, at least when there is danger of abortion. Nav. Sylv. &c. For if this be not the case, it will not at least be mortal sin, because that the seed

per se ex actu. Unde Dian. p. 3. tr. 1, r. 204, et Connick. d. 34, dñb. 9, nullum peccatum agnoscunt. 3. Cum uxor laborat fluxu menstruo. Quod tamen non esse mortale, contra Azor. docet Sanch. lib. 9, d. 21, n. 2. Imo aliqui apud Dian. l. c. ut pont. l. 10, c. 11, et c. 14, num. 5, et 6. docent nec veniale esse, si periculum urgeat, quod Sanchez. l. c. docet esse probabile; additque M. Perez, si ob finem honestum fiat, nullum esse; et teneri reddere debitum uxorem, si maritus exigat? Vide dist. 49, sess. 3.—*Lig.* tom. 6, n. 921.

Quæritur I. an liceat conjugi coire die communionis? Vide quæ fusius diximus hoc l. 6, num. 274, et 275, ubi tenuimus esse veniale accedere ad eucharistam die copulæ habitæ ob voluptatem, nisi excuset aliqua rationabilis causa. Si vero copula est habita causa procreandæ prolis, vel etiam incontinentiæ vitandæ, tunc est solmnis consilii S. communionis abstinere, ex cap. Si vir 7. Canon 33. q. 7. Et sic pariter est consilii abstinere die quo conjux reddidit debitum; a quo autem reddendo, ordinariè loquendo, propter communionem non potest eximi; nam aliquando potest honestis precibus resistere. Quid autem debeat confessarius respondere conjugi interroganti, an teneatur reddere die communionis? Vide d. n. 274. v. Quid. Sed post communionem sumtam nullum est peccatum reddere. An autem petere? Alii dicunt esse veniale: alii nullum. Vide ibid. verb. Die autem.—*Lig.* tom. 6, n. 922.

Quær. II. an diebus festivis, vel jejunii aut rogationum, sit illi-

is then frustrated of its end does not follow of itself from the act, whence Dian, &c. recognise no sin. 3. When the wife is troubled with the monthly terms. That this is not a mortal sin is taught by Sanchez, in opposition to Azor. Nay, some teach that it is not a venial sin, if danger be urgent, which Sanch. teaches to be probable; and it is added by M. Perez, that it is no sin, if it is done for an honest end, and that the wife is bound to pay the debt if the husband demands it. See dist. 49, sess. 3.—*Lig.* vol. 6, n. 921.

It is asked, I., whether it be lawful for a husband to have copulation on the day of communion? See what has been said at large in this book 6, num. 274 and 275 where it is maintained that it is a venial sin to come to the eucharist on the day on which copulation has been had on account of pleasure, unless excused by some reasonable cause. But if copulation has taken place for the purpose of begetting offspring, or even of avoiding incontinence, in that case it is the solemn decree of the sacred council to abstain from communion. And, in the same manner, it is determined to abstain on the day on which the married party has paid the debt, from rendering which, ordinarily speaking, he or she cannot be exempted on account of communion, for he may sometimes stay away from honest prayers. But what ought the confessor to answer to the married party who asks whether he be bound to render the debt on the day of communion? After partaking of communion, it is no sin to render the debt. But is it a sin to demand the debt? Some say it is a venial sin, others that it is no sin at all.—*Lig.* vol. 6. n. 922.

It is asked, II., whether conjugal copulation is unlawful on festival

citus actus conjugalis. Commune est non esse vetitum tunc debitum reddere cum D. Thoma Suppl. q. 64. a. 7. ubi dicit: Cum mulier habeat potestatem in corpore viri, et e converso, tenetur unus alteri debitum reddere quocunque tempore, et quacunque hora. An autem sit vetitum petere? Prima sententia affirmat; et hanc tenent D. Thom. loc. cit. art. 1. S. Ant. 3. p. tit 1. c. 20. §. 11. Concin. t. 10. p. 395. n. 10. item Mag. Sent. Alb. Palud. Gers. Sylv. Tab. etc. ap. Sanch. lib. 9. d. 12. n. 3. Hoc tamen sub culpa veniali, ut ait D. Thom. cum aliis, non vero sub mortali, ut aliqui improbabiler tenent apud Sanch. quia tempus sacrum non est circumstantia (ratio S. D.) trahens in aliam speciem peccati, unde non potest in infinitum aggravare. Rationem autem cur sit veniale, assignat idem Angelicus, dicens: Actus matrimonialis, quamvis culpa careat, tamen, quia rationem deprimit propter carnalem delectationem, hominem reddit ineptum ad spiritualia: et ideo in diebus in quibus præcipue spiritualibus est vacandum, non licet petere debitum. Secunda vero communior negat esse illicitum: et hanc tenent Sanch. lib. 9. d. 12. num. 5. cum S. Bon. Soto, Cajetan. etc. item Pont. l. 10. cap. 9. per totum. Salm. c. 15. num. 58. ac Boss. cap. 7, n. 84. cum Azor. Regin. Fill. Perez. etc. Ratio, quia id non habetur vetitum ullo jure, non divino, quia in festis sola opera servilia prohibentur; non ecclesiastico, quia diebus festis et jejunii, non obstante congressu maritali, possunt conjuges servare ea quæ sunt de præcepto. Quod si canones et sancti patres videantur iis diebus expresse prohibere usum conjugii, dicunt præfati AA. id intelligi de consilio, non de præcepto, ut multis nititur probare Sanchez cum Gloss. in canones et aliis interpretibus.—*Lig.* tom. 6, n. 923.

days, or days of fasting or thanksgiving? It is generally supposed with St. Thomas, that it is not then forbidden to pay the debt, where he says, "Inasmuch as the woman has power over the body of the husband, and the converse, the one is bound to pay the debt to the other at any time, and at any hour." But is it forbidden to ask it? The first opinion affirms this, and is maintained by St. Thomas in the above-cited place. This, however, comes under venial sin, as is said by St. Thomas and others; but not under mortal sin, as others improperly maintain, with Sanchez, because, (according to St. Thomas) *Holy time is not a circumstance enticing to another species of sin, whence it cannot heighten infinitely.*" But the same Saint assigns a reason why it should be venial, saying, "The matrimonial act, although it be free from blame, yet, inasmuch as it takes away the reason on account of carnal delight, renders a man unfit for spiritual things; and, for that reason, he ought not to demand the debt on those days on which he ought especially to be intent on spiritual things. But the second opinion, which is more general, denies that it is unlawful; and this is maintained by Sanchez, &c. The reason is, because it is not forbidden by any law; neither by divine law, for on festival days, *servile works only* are forbidden; nor by ecclesiastical law, because on festival days and fast days, the *marital encounter not opposing*, married parties may keep those things which are according to the commandment. But if the canons and the holy fathers seem, on those days, expressly to prohibit the use of marriage, the above-cited authors say that that is understood of the counsel, not of the precept, as is attempted to be proved by Sanchez, and other interpreters.—*Lig.* vol. 6, n. 923.

Quær. III. an liceat coire conjugibus tempore prægnationis. Comune, est id non esse mortale, nisi adsit periculum abortus. Ita omnes cum Sanch. l. 9. d. 22 num. 3: Pont. l. 10, c. 14, n. 7: Salm. c. 15, num. 78; et Boss. cap. 9, n. 33; ex D. Augustino, De Bono Conjug. cap. 6, ubi: Conjugalis enim concubitus generandi gratia non habet culpam: concupiscentiæ vero satiandæ, sed tamen cum conjugè, propter fidem tori, venialem habet culpam.

“Censent autem Sylvest. Ang. et Tab. apud Sanch. l. c. n. 1. adesse periculum abortus, si copula habetur circa initium conceptionis, quia ex novo coitu materia illa nondum plene formata, facile dispergitur; nam, licet matrix post conceptionem statim claudatur, tamen, ut ait Avicenna, ex vehementi delectatione coitus irritata, aliquando aperitur, et materia effunditur. \* \* \* \*

Tanto minus autem aderit tale periculum, si habeatur copula tempore proximo partui, ut perperam aliqui dixerunt, putantes tunc non exponi prolem discrimini suffocationis; nam verius, ut ait Boss. num. 30. cum Rayn. fœtus humanus ita secundinis involvitur, ut eum non possit semen contingere. Hinc ait Petrocor. t. 4. p. 447, periculum abortus non ita facile præsumendum; et ideo non esse vexandos conjuges importunis interrogationibus, ut abstineant tempore prægnationis: Quæ enim (ait) spes eos a concubitu avocandi? et quale non timendum periculum, si a sua bona fide perturbentur?—*Lig.* tom. 6. n. 924.

Quær. IV. an licitum sit conjugibus coire tempore menstrui. Hic prænotandum quod fluxus mulieris alius sit naturalis et ordinarius, et iste proprie dicitur menstruus, quia

It is asked III., whether it be lawful for married people to have connection during pregnancy? It is the common opinion that that is not a mortal sin, unless there be danger of abortion. Thus all with Sanchez, &c. Because conjugal connexion, for the sake of procreation, has not sin, but when exercised for the purpose of satisfying concupiscentia, but still with the consort, on account of the fidelity of the marriage bed, it is venial sin. It is also thought by Sylvester, &c., that there exists danger of abortion if connexion be had about the beginning of conception, because from the new encounter the matter, not yet fully formed, is easily dispersed; for, although after conception the matrix immediately closes, yet, as says Avicenna, when irritated by vehement delight caused by connexion, it sometimes opens and the matter is poured out. \* \* \* \*

But there will exist so much the less danger of that nature (of abortion) if copulation be had at the time nearest to child-birth, as some have rashly said, who think that then the child is not exposed to the danger of suffocation. But more truly, as say Boss., &c., the human fœtus is so wrapped in the *secundines* that the semen cannot touch it. Hence, say Petrocor. t. 4. p. 447, danger of abortion ought not so easily to be presumed, and that, therefore, married parties ought not to be harassed by vexatious questions that they should refrain during the time of pregnancy, “For what hope is there,” says he, “of withdrawing them from sexual intercourse, and what danger is not to be apprehended if they are disturbed from their own good faith.”—*Lig.* vol. 6, n. 924.

It is asked, 4th, whether it be lawful for married persons to copulate at the time of the monthly courses? Here it is to be remarked that the woman's flux is sometimes natural

communiter singulis mensibus solet in feminis accidere, et durat ut plurimum per duos vel tres dies. Alius extraordinarius, proveniens ex aliquo morbo diuturno qui aliquando durat usque ad duodecim dies et ultra. Tempore fluxus extraordinarii certum est licere tam reddere quam petere. Ita communiter Sanchez l. 9. d. 21. n. 7. Pont. l. 10. c. 14. n. 6. Holzm. num. 462. Salm. c. 15. n. 76. et Boss. cap. 9. n. 13. cum Azor. Reb. Fill. Hurtad. etc. ex divo Thom. in 4. d. 32. q. unic. art. 2. q. 2. ubi expresse hoc docet, et rationem adducit, dicens: In fluxu menstruorum innaturali non est prohibitum ad menstruatam accedere in lege nova, tum propter infirmitatem, quia mulier in tali statu concipere non potest; tum quia talis fluxus est perpetuus et diuturnus, unde oportet, quod vir perpetuo abstineret. Tempore autem fluxus naturalis adsunt tres sententiæ. Prima damnat coitum de mortali; et hanc tenent idem D. Thom. loc. cit. q. 3. ad 1. ubi dicit tempore hujus menstrui peccare mortaliter tam virum voluntarie petentem, quam uxorem voluntarie reddentem: excipit si mulier quasi coacta debitum redderet. Eandem sententiam tenent S. Ronc. Alens Sotus, Tab. Pallac. etc. apud Ross. c. 9. n. 16. Probatur 1. ex Levit. cap. 20. v. 18. ubi dicitur: Qui coierit cum muliere in fluxu menstruo; et revelaverit turpitudinem ejus, ipsaque, aperuerit fontem sanguinis sui, interficientur ambo. Obijciunt huic Sanch. l. c. n. 2, et Boss. n. 16. quod lex illa fuerit cæremonialis, et ideo non obliget in lege evangelica. Sed respondet D. Thom. dict. q. 2. quod licet illud præceptum fuerit cæremoniale quoad immunditiam, fuerit tamen morale quantum ad nocumentum (verba S. D.) quod in prole ex hujusmodi commixtione frequenter sequebatur. Probatur 2. ex can. fin dist. 5. ubi Gregor. Papa: Cum et sine partus causa, cum

and ordinary, and that is properly called monthly, because it generally happens to females every month, and lasts commonly for two or three days. The other flux is extraordinary, arising from some chronic disease, which sometimes lasts even for 12 days, or more. At the time of extraordinary flux it is admitted to be lawful both to demand and to pay the debt. Thus commonly, Sanchez, &c., where he expressly teaches this, and adduces as a reason, saying, "In an unnatural flux of the monthly courses, it is not prohibited in the new law to have access to a woman during her terms, both on account of infirmity, inasmuch as a woman in that condition cannot conceive, and because such flux is perpetual and lasting, whence it behoves that a man should perpetually abstain." But concerning the time of the natural flux there are three opinions. The first condemns copulation as mortal sin; and this is maintained by the divine Thomas in the quoted place, where he says that both the man who voluntarily demands, and the wife who voluntarily pays, the debt at the time of this flowing, commit mortal sin. He makes an exception if the woman pays the debt, being, as it were, forced thereto. The same opinion is maintained by S. Ronc. &c. It is proved, 1st, from Levit. c. 20, v. 18, where it is said, "He who lies with a woman having her sickness, and shall uncover her nakedness, and she shall uncover the fountain of her blood, they shall be both put to death." To this an objection is raised by Sanchez, &c., that this was the ceremonial law, and therefore is not obligatory in the evangelical law; but this is answered by St. Thomas, that although that precept was ceremonial as touching uncleanness, yet that it was moral as touching the injury which frequently followed in the offspring from commixture

(uxores) in consuetis menstruis detinentur, viris suis misceri prohibentur. Probatur 3. ratione, tum quia proles eo tempore nascitura exponitur periculo nascendi leprosa, et monstrosa; tum quia adest periculum semen frustra effundendi, cum raro vel nunquam eo tempore mater sit apta conceptioni.

Secunda sententia totaliter opposita dicit accessum ad menstruatam omni culpa carere; hanc tenent Glossa in can. Si caus. v. Conceptus 33. q. 14. item Perez, Fill. et Hurtad. apud Boss. n. 20. eamque Sanch. lib. 9. d. 21. n. 7, putat æque probabilem ac tertiam, quam mox referemus. Ratio, quia hodie id nullo jure prohibetur; non divino cum lex Levitica, adveniente lege nova jam cessaverit. Nec obstare dicunt, quod prohibitio illa non cessaverit, quatenus fuit moralis propter vitandum damnum prolis; nam respondent, quod testetur S. Hier. in 18. Ezech. rationem prohibitionis in Levitico fuisse, quia illo tempore, ob sanguinem femineum infectum ex coitu, fœtus leprosi, et elephantiaci nascebantur: sed hodie incertum est adesse damnum, et multo certius est mulierem tempore menstrui non concipere, ut dicunt Sanch. Pal. Boss. et Sahnantic ll. cc. ac demum, etiamsi concipiat cum aliquo damno prolis, dicunt Sanch. l. 9. d. 21. n. 7. et Boss. c. q. n. 22. id non obstare, quia melius est prolem sic nasci, quam non nasci; forte enim postmodum non gigneretur, vel non esset eadem proles, unde proles beneficium recipit, non damnum; nec obstat dicere, quod, si non proli, saltem sic inferatur damnum naturæ quæ postulat ut proles modo con-

of this kind. It is proved, 2nd, where Pope Gregory says, "When they (the wives) are detained in their accustomed terms, both on account of child-birth and otherwise, let them be prohibited from copulating with their husbands. It is proved 3rd by the reasons, both because the offspring about to be born at that time is exposed to the danger of being born leprous, and monstrous; and because there is danger of spilling seed in vain, since the mother is rarely or ever fit for conception at that time.

The *second* opinion, totally opposed to this, says that access to a woman in her terms is free from all blame; this is maintained by many authors, and Sanchez thinks this equally probable as the third opinion, to which we shall presently refer. The reason is, because it is at this day by no law prohibited, nor by divine law, since on the coming of the *new*, the Levitical law has already ceased. And it is said that it is no obstacle, because that prohibition has not ceased, for as much as it was moral on account of avoiding danger to the offspring. For they answer that St. Jerome in Ezech. 18, affirms that the reason of the prohibition in Leviticus was, that at that time, in consequence of the woman's blood being infected by copulation, the fœtus was born leprous and afflicted with *elephantiasis*. But in these days it is uncertain that that danger exists, and it is much more certain that a woman does not conceive during the time of her terms, as is said by Sanchez, &c.; and lastly, that, although she may conceive with some danger to the offspring, it is said by Sanch. that that is no obstacle; because, it is better that offspring should be born thus, than not be born at all; for perhaps afterwards it might not be born, or might not

venientiori generetur: nam respondent, quod, si non inferatur damnum proli, neque infertur naturæ. Non prohibetur igitur jure divino; non jure ecclesiastico, nam ad textum Gregorii respondet Pontius l. 10. c. 14. n. 6. prohibitionem illam ecclesiasticam hodie exolevisse; imo verbum illud Pontificis, "prohibeantur," explicatur ab aliis, ut dicit ibi Gloss. "prohibeantur, id est sub forma prohibitionis dissuadeantur." Nec jure naturali, quia, licet sit facile periculum eo tempore frustrandi semen, tamen ad coitum cohonestandum non requiritur, ut ex eo sequatur generatio, sed sufficit, quod coitus ille per se sit aptus generationi, esto per accidens semen dispergatur, ut accidit in accessu ad mulierem prægnantem, aut sterilem. Neque (aiunt) in tali coitu adest indecentia culpabilis: nam, ut dicit Per. illa est potius materialis. Hinc, concludunt nullo modo peccare conjuges, si eo tempore coeant, non jam ex affectu libidinis (quod non posset excusari a veniali), sed ut utantur jure suo cum moderata delectatione.

Tertia demum sententia, communissima et probabilior, dicit coitum tempore menstrui non esse mortale, sed non excusari a veniali. Ita S. Anton. 3. part. tit. 1. c. 20. §. 3. Nav. cap. 16. num. 32. Conc. p. 398 n. 20. &c. &c. Non sit mortale,

be the same offspring. Whence the offspring receives benefit and not injury! Nor is it any obstacle to say, that if danger is not caused to the offspring, it is at least to nature, which requires that the offspring should be born in the most convenient manner; for it is answered that if no danger is caused to the offspring, neither is any inflicted on nature. It is prohibited, then, neither by the divine nor the ecclesiastical law, for to the text of Gregory it is answered by Pontius, that that ecclesiastical prohibition is at this day obsolete; nay, that very saying of the Pontiff, "*Let them be prohibited*," is explained by some, as says the Gloss. in that place—*Let them be prohibited*—that is, *let them be dissuaded under the form of prohibition*. Nor by the natural law, because, although the danger of frustrating the seed is at that time easy, yet in order to render copulation honourable, it is not required that generation should follow therefrom, but it is sufficient that that copulation should of itself be fit for generation, although by accident the seed may be wasted, as happens in the case of copulation with a pregnant or barren woman. Nor (as they say), *is there in such copulation culpable indecency*; for, as says Per. that is rather *material*. Hence they conclude that married parties in no degree sin if they copulate at that time; not in this instance from affecting lust (which could not be excused from a venial sin), but in order that they may enjoy their privilege with moderate delight.

The *third* opinion—the most common and the more probable—declares that copulation at the time of the *terms* is not a *mortal*, but cannot be excused from a *venial* sin. So St. Anton. &c. That it is not a mortal sin, is proved by the second

probat ratio adducta, mox supra pro secunda sententia. Quod autem sit veniale, probatur, quia talis concubitus, cum nolint conjuges expectare tempus generationi aptius, et jam brevi adventurum, involvit quandam turpitudinem, et deordinationem, cum femina tunc sit inepta commodæ receptioni et retentioni seminis, et ideo coitus tunc minus convenit fini generationis. Conveniunt autem Nav. Pal. Sanch. Salm. ll. cc. et. Boss. num. 15. cum. Hurt. quod nullum sit peccatum coire tali tempore, si adsit aliqua causa turpitudinem illam cohonestans. nempe ad vitanda dissidia, aut incontinentiam in se vel in altero, aut alia similia. An autem casu quo nulla adsit causa, uxor menstruata possit et teneatur debitum reddere, si maritus monitus nolit desistere? Affirmant Pal. p. 4. §. 4. n. 9. cum Con. Salm. et Sanch. d. 21. n. 96. qui citat pro se etiam D. Thom. d. 32. art. 2. q. 3. sed non bene, ut mox videbimus. Verum probabilius negandum cum Pontio et Bouac. qui citat Sylv. &c.—*Lig.* tom. 6, n. 925.

reason, which has been just above adduced for the second opinion. But that it is a venial sin is proved; inasmuch as such copulation, since married parties refuse to wait for a time more fit for generation, and which would very shortly arrive, involves a certain degree of turpitude and inordinate desire, inasmuch as the female is then unfit for the advantageous reception and retention of the seed, and for that reason copulation is the less adapted for the end of generation. But it is agreed by Nav. &c. that it is no sin to have copulation at such time, provided there exists some cause *rendering honourable that turpitude*, viz., to avoid dissention or incontinence in either party, or other like causes. But in a case in which no cause exists, can a woman during her terms, and is she bound, to pay the debt, *if her husband, forewarned, refuses to desist?* It is affirmed by Pal. &c., but not well, as we shall presently see. But it is more probably to be *denied* by Pontius, &c.—*Lig.* v. 6, n. 925.

## ON THE IMPEDIMENT OF AFFINITY.

Oritur ex carnali copula perfecta.

Quid est affinitas? Est propinquitas personarum orta ex copula carnali: per illam vir fit affinis consanguineis mulieris, et mulier consanguineis viri; cum enim per copulam vir et mulier fiant una caro, uterque tangit consanguineos alterius, et eos sibi facit affines.

Fundamentum itaque affinitatis est copula carnalis, sive matrimonialis, sive extra-matrimonialis: ut tamen copula carnalis affinitatem inducat, debet esse consummata in vase debito cum emissionem seminis

*It arises from perfect carnal copulation.*

What is affinity? It is a relationship of persons, arising from carnal copulation: by it the man becomes allied to the blood-relations of the woman, and the woman to the blood-relations of the man; for when, by copulation, the man and woman become one flesh, each touches the blood-relations of the other, and becomes allied with them.

Therefore the foundation of affinity is carnal copulation, whether it be matrimonial or extra-matrimonial: however, that carnal copulation may occasion affinity, it ought to be consummated in the proper



virilis intra illud, seu quod idem est, debet esse apta generationi: ita post S. Thom. Suppl. q. 55. art. 4. ad. 2. et Auctores communiter.

Et hinc non exurgit affinitas ex copula sodomitica, neque ex illa, quæ habita fuit citra seminationem viri.

Contra oritur affinitas ex copula inter senes et steriles habita: quia illa de se generationi apta est, et ex ea vir et mulier fiunt una caro.—*Dens.* tom. 7, p. 239.

passage with the emission of the man's seed within it, or what is the same thing, it ought to be fit for generation: as St. Thomas and other Authors commonly say.

And hence affinity does not arise from sodomitic copulation, nor from that which has been had without the man's spending.\*

On the contrary, affinity arises from carnal copulation between the old and the barren, because that is of itself fit for generation, and from it man and woman become one flesh.—*Dens.* v. 7, p. 239.

## ON IMPOTENCE, AND WHEN IT INVALIDATES MATRIMONY.

Quid est impotentia?

R. Est incapacitas perficiendi copulam carnalem perfectam cum seminatione viri in vase de se debito, seu de se aptam generationi.

Dividitur in impotentiam naturalem et accidentalem, in perpetuam et temporalem, in absolutam et respectivam, in antecedentem et consequentem.

Absoluta dicitur, quæ est respectu omnium; quali laborant frigidi: respectiva vero, est respectu aliquarum personarum tantum, ut si mulier sit nimis arcta respectu unius viri, non respectu alterius.—*Dens.* tom. 7, p. 273.

Ex dictis patet spadones et eunuchos utroque testiculo carentes non posse matrimonium inire valide. Unde Sixtus V. matrimonia ab huiusmodi eunuchis in Hispania con-

What is impotence?

*Answer.* It is an incapacity to perform perfect carnal copulation with a seminal emission from the man into the vessel duly appointed for that purpose, or such copulation as is, in its own nature, fit for generation.

Impotence is divided into natural and accidental, into perpetual and temporal, into absolute and respective, into antecedent and consequent.

Absolute impotence is that which is in respect to all; such as the frigid labour under: but respective impotence is that which is in respect to some person only, as if a woman be *too tight* in respect to one man, *but not* in respect to another.—*Dens.* v. 7, p. 273.

From what is said, it is clear that geldings and eunuchs who want both testicles cannot validly enter into matrimony. For which reason Sixtus the 5th decreed that the

\* According to this doctrine, if a man has *natural* connection with a woman, he can not marry her sister; *but* if he commits sodomy with the one, he can marry the other; or if he has only *partially* committed fornication with the one (*i. e.*, had begun the act, but was not *received into full connection*), then also it is no impediment to his marrying the other sister; as from these two sources of *refined gratification* affinity does not exist.

tracta irrita esse decernit; secus enim si alterutro duntaxat testiculo careant.

Senes et steriles valide contrahant: Si tamen quis ita senio decrepitus sit, ut intra vas seminare nequeat, impotens censeri debet.

An si mulier contracto matrimonio reperitur nimis arcta, pati debet incisionem?

R. Si non possit sine periculo vitæ viro aptari, matrimonium est invalidum; adeoque certo incisionem pati nec debet nec potest: si vero sine periculo vitæ incisionem fieri possit matrimonium erit validum, tenebiturque mulier incisionem pati, præsertim si idem sit chirurgus qui conjux; nisi ex incisione illa notabile morbi periculum subiret, cum quo, uti non tenetur debitum reddere, ita nec incisionem pati.

Quid si impotentia proveniat ex debilitate viri, qui copulam cum virgine habere nequeat, sed bene cum corrupta?

R. S. Thomas supra quest. 58, art. ad. 5, censet quod tali casu vir debeat medicinaliter aliquo instrumento claustra pudoris frangere, et ita uxori suæ conjungi: hoc tamen intelligi debet, si id fieri possit sine peccato aut vitæ periculo. Multi interim putant, virginem ad hoc permittendum (licet ex charitate citra grave incommodum teneri possit) ex justitia non obligari; quia impotentia non tam se habet ex parte virginis, quam ex parte viri debilioris. —*Dens*, tom. 7, pp. 275-6.

marriages contracted by this sort of eunuchs in Spain were null and void: for it were otherwise if they wanted but one testicle only.

Men, old and barren, may validly contract marriage; if, however, any one be so decrepit from old age, as not to be able to spend within the vessel (or passage) he ought to be considered impotent.

If a woman, upon having contracted matrimony, be found *too tight*, ought she to suffer incision?

*Answer.* If she cannot, without danger to her life, be *fitted* to the man, the marriage is invalid; and therefore she neither ought nor can suffer incision: but if, without danger to her life, the incision can be made, the matrimony will be valid, and the woman will be bound to submit to the incision, particularly if her husband be a surgeon; unless from that incision there should follow a notable danger of disease, with which (danger) as she is not bound to render marriage duty, so neither is she bound to suffer the incision.

What if the impotence should arise from the debility of the husband, who is unable to copulate with a virgin, though he can do it well with a woman who had been previously deflowered?

*Answer.* St. Thomas thinks that in such case the husband ought medicinally to break the barriers of her virginity with some instrument, and so have connexion with his wife: this, however, ought to be understood, if it can be done without sin or danger to life. Many, however, are of opinion, that the virgin (though in charity bound to submit without grievous inconvenience) is not in justice obliged to permit this, because the impotence is not so much on the part of the virgin, as on the part of the man who is too weak. —*Dens*, v. 7, pp. 275-6.

Invalidating impotence. That is

Impotentia dirimens. Illa hic in-

telligenda est, quæ sexuum copulam impedit per quam duæ personæ fiant una caro: non fiunt autem una caro, nisi cum vir intra vas mulieris semen immittit. Alioqui enim non consummatur matrimonium neque inducitur ulla sive ex delicto, sive sine delicto affinitas, etiamsi fuerit viri pars genitalis intra vas fœminæ.

Quamobrem eunuchi, quamvis aliqui eorum possint vas fœminæ ingredi, nullatenus sunt matrimonii capaces ob defectum seminis prolifici. Idemque sentiendum de illis quibus attritus est uterque testiculus; sed illi, quibus unus superest illæsus, matrimonium inire possunt, quia sunt adhuc seminandi capaces. Fœmina nulla habet impotentiam derimentem, nisi quatenus est arcta, non valens intra se recipere semen viri: solaque fœminæ ad seminandum impotentia non inducit impedimentum, quia fœmineum semen non censetur ad generationem necessarium.—*Cabussutius*, p. 313, Ed. Lugd. 1709.

His aliqui adjungunt aliud impotentiae genus ex nimio viri calore, quo fit, ut effundatur semen antequam perfecta fuerit copula. Sed raro usu venit ut hinc oriatur perpetuum impedimentum quamvis enim sæpius contingeret, ut multi congressus aut conatus conjugum sine debita seminatione fierent, continget tamen aliquando, ut aliquis ex multis conatibus non frustretur hoc effectu. Præterea futurum quandoque est, ut nimius ardor longiore consuetudine et temporum progressu defervescat. Denique sufficere potest ad consummatam copulam, si pars aliqua seminis intromittatur.

to be understood here which impedes the copulation of the sexes, by which two persons become one flesh; but they do not become one flesh, unless when the husband injects seed within the vessel of the woman. For otherwise matrimony is not consummated, nor is any affinity induced, either with or without sin, although the genital part of the man may have been within the vessel of the woman.

Wherefore eunuchs, although some of them are able to enter the vessel of the woman, are by no means capable of marriage, in consequence of defect of prolific seed; and the same thing is to be observed of those who have had both of their testicles bruised, but those who have *one* remaining uninjured are able to enter matrimony, because they are still capable of spending. No woman has invalidating impotency, unless in so far as she is *tight*, not being able to receive within herself the seed of the man; and the impotence of the woman to spend does not alone induce impediments, because the female's seed is not considered necessary for procreation.—*Cabussutius*, p. 313. Lugd. Ed. 1709.

To these some add another kind of impotence from the too great heat of the man, by which it comes to pass that the seed is emitted before copulation has been perfected. But *it seldom happens in practice that perpetual impediment should hence arise*; for although it might oftentimes happen that many encounters or attempts of the married parties may take place without due spending, yet it will sometimes happen that one of the many efforts should not be frustrated of this effect. Besides, it will at length happen that from long custom, and in progress of time, *this too great heat will cool down*. Lastly, it may suffice to perfect copulation that some portion of the seed be introduced.

Duplex est impotentia distinguenda. Una quidem perpetua. Altera temporalis. Præterea alia est impotentia absoluta, id est, respectu omnium; alia respectiva, per quam aliquis est impotens habito respectu ad certas quasdam personas, sed potens respectu aliarum. Sic enim potest fœmina esse naturaliter arcta respectu quorundam, sed non omnium virorum Quinetiam potest aliquis esse impotens respectu virginum, non vero respectu viduarum.—*Cabassutius*, p. 314.

Haud facile credendum est mulieri de viri sui impotentia, sed ad ipsius querelam seorsim primum singuli conjuges interrogandi sunt, et præmisso juramento eorum responsiones in scripta redigendæ. Deinde seorsim vocandi singulorum conjugum propinqui, ut si quid hac de re sciverint hoc deponant. His succedit decretum inspectionis sexuum, fœminæ quidem per obstetrices jurejurando adactas, viri autem per medicos et chirurgos similiter juratos. Si nec sic quidem constet virum esse prorsus impotentem, jura decernunt experiendi et explorandi gratia trium annorum cohabitationem. Si nullatenus probari potest fœminæ conquerentis intentio, et vir se neget impotentem, partesque ad copulam requisitas habeat integras et illæsas, quod per chirurgos juratos ita referatur, viro potius quam mulieri credendum est post præstitum juramentum; hoc uno excepto si mulier se virginem esse probet ex aspectu corporis et matronarum attestacione; hæc enim probatio potior est quam mariti contraria assertio, etc. *Cabassutius*, pp. 314-320.

Impotence is of two kinds. One, indeed, perpetual. The other temporary. Besides, one kind of impotence is absolute—that is, in respect of all; the other respective, by which a man is impotent with respect to some particular persons, but capable with respect to others. For thus a woman may be naturally *tight* with respect to some, but not all, men. Moreover, a man may be impotent with respect to virgins, but not with respect to widows.

Credit should not easily be given to a woman respecting the impotence of her husband, but the married parties are first to be interrogated separately respecting her complaint, and an oath being taken, their answers are to be reduced to writing. Afterwards the relatives of each of the parties are to be called separately, in order that they may depose whatever they know concerning this thing. After this follows a decree for an examination of the sexes,—of the woman indeed by midwives bound by oath, and of the husband by physicians and surgeons similarly sworn. If it does not even thus appear evident that the man is entirely impotent the laws decree cohabitation *for three years, for the purpose of experimenting and investigating*. If the charge of the complaining woman cannot even yet be proved, and the husband denies his impotence, and has the parts necessary for copulation whole and unhurt, which may be referred to the surgeon thus sworn, credence is to be given to the husband rather than to the wife, after an oath has been administered; with this sole exception, if the woman proves herself to be a virgin from the appearance of her body and the attestacion of the matrons; for this proof is preferable to the contrary assertion of the husband.—*Cabassutius*, p. 314-320.













