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# The French Court of Assizes

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# THE FRENCH COURT OF ASSIZES

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The Court of Assizes is the principal criminal court in France and the only court that functions with a jury. It has jurisdiction over the graver felonies, defined as "crimes", as distinguished from "délits", which are tried in the correctional courts. In viewing the work of a court of assizes one is impressed by (1) the rapid, routine selection of a jury, (2) the dominant position of the President of the Court, who controls every step in the proceedings, (3) the interrogation of the accused at the opening of the trial, (4) the freedom allowed the witnesses in testifying, (5) the infrequence of objections by the lawyers to the President's rulings, (6) the simplicity of the issues presented for the decision of the jury, (7) the certainty of a verdict, due to the majority rule, and (8) the rapid termination of the trial, a contested murder case rarely taking more than two sessions of five hours each, and often only one.

There is one court of assizes per year in each of the eighty French Departments. The number and length of the sessions depend upon the amount of criminal affairs to be dealt with. In Paris there is one assize court for the Department of the Seine; it holds three terms of three months each during the year.

The Court is composed of a president and two *assesseurs,* or associates. The President is chosen from among the justices of the court of appeal in the circumscription containing the Department where the court is to sit. The associate judges are selected from among the associate justices of the court of appeal or from the judges of the Departmental civil tribunal. In each case the selections are made by the first president of the appellate court. If a trial promises to be lengthy, the Assize Court may itself call one or two supplementary judges from the civil tribunal, to sit with it and replace any judge who becomes incapacitated. Appointments are limited to a particular session, which is usually two weeks. At Paris, due to the

[1]United States Consul, formerly at Paris, now at Toronto.

volume of business, two presidents are named for each session and they alternate by two weeks on the bench and two weeks for the study and preparation of forthcoming cases.

The composition of the court of assizes is thus designed to give it the best judicial talent and experience, together with independence from local influences. All judges who sit upon the assize bench, as well as other magistrates in France, are chosen by examination and advanced in grade by the Ministry of Justice. They may be assigned from one jurisdiction to another and the same is true of the Government's representatives who appear in the assize courts.

## The Accusation

There is no grand jury in France. In its place is to be found a commission of judges, usually three in number, who are named from the magistrature of the Department by the President of the Court of Appeal. This commission, known as the Chamber of Accusation, receives the reports of examining magistrates on cases which they have investigated. The clerk reads to the Chamber, in the presence of the *procureur général*, the testimony and documents in each case. No oral testimony is received, or further inquiry made, unless the Chamber deems it necessary to their decision. In that event it charges one of its judges with the investigation and considers his report as a supplement to the evidence already before it. Neither the defendant nor the complaining witness is allowed before the Chamber. The voting upon the accusation is conducted by the judges in secret.

This method of inquiry has the advantages of bringing into play expert judicial ability; it is efficient in operation and it avoids the expense to the Government of having witnesses brought a second time before the trial for the purpose of preliminary examination. It has worked well in practice for nearly a century.

## Notices to the Accused

At least five days before the appearance of the accused in the court of assizes, a copy of the indictment must be left with him. The day before the trial, a list of the jurors on the fortnight panel must be given him, and at least twenty-four hours before the appear-

ance of any witness to testify, his name must have been supplied the defendant. On the other hand, the accused must give notice to the procureur, twenty-four hours in advance, of any witness he intends to use.

The defendant has the right to one copy gratuitously, and to additional copies at his expense, of the procès-verbal covering the alleged criminal transaction, and of the testimony given by the witnesses in the examining trial.

### Selection of the Jury

Jurors for a particular trial, twelve in number, are selected from a panel of thirty-six talesmen. The names are drawn in succession from an urn and the Government or the defendant may reject any name, without assigning a reason, provided that the last twelve names in the urn, or the first twelve names unobjected to, must constitute the jury. The attorneys are not allowed to question prospective jurors and the selection of a jury usually takes ten or fifteen minutes. If the trial promises to be lengthy, extra jurors are sworn in to replace any who become incapacitated.

### Powers of the President and the Court

"The President", according to the statute, "is invested with a discretionary power, in virtue of which he may take upon himself all (measures) that he believes useful to discover the truth; the law charges his honor and his conscience with the exercise of every effort to favor its manifestation." The general rule of evidence applied in the court is expressed by Article 319 of the Code of Procedure: "The President may demand of the witnesses and of the accused every explanation he believes necessary to the revelation of the truth. The judges (associates), the *procureur général* and the jurors have the same right by demanding permission of the President." Pursuant to his discretionary power, the President may call before him any person, and he may have procured any document, considered of utility in uncovering the truth, as developments in the case suggest. The persons called under this clause of the law are not regarded as witnesses, as they do not take the oath, and their declarations are considered as information, although heard by the jury.

In theory, the conscience of the magistrate is the only limit in the reception of evidence, or in the exclusion of that deemed irrelevant or immaterial. The exercise of the power, however, is subject to restraints imposed by the code, and any clear abuse thereof, with resultant substantial wrong to the accused, may be reviewed on appeal. As instances of his discretionary power, the President may, with or without request from a party, order a visit by the court and jury, with the defendant and attorneys, to the scene of the crime. He may order the reading of the deposition of a witness whose appearance and oral testimony he ruled to be unnecessary. He may allow the appearance of a witness whose name was not notified to the accused, or the introduction of a document which had not been communicated to him. He may permit the reading of testimony given by witnesses at the examining trial who were cited, but did not appear, at the assize trial.

While the President should accede to any reasonable request from a party, relating to the reception of evidence, he need give no reasons for refusing a request, or for any decision that he makes in the course of the trial. His power in these respects, is personal to him, as President of the Assizes, and his associates have no control over its exercise. Sometimes, they are called upon to decide whether a particular question may be asked a witness who has been introduced on the President's initiative. In other circumstances, where expressly authorized by law, they may revise the ruling of the President on a question of procedure or certify the facts when a contention is made by a party against the decision of the President in the exercise of his descretionary power. Many trials occur in which the associates preserve an impassive attitude throughout, being consulted by the President only upon the fixation of sentence.

### Representation of the Parties

The Government is represented before the Court of Assizes by the *Procureur Général.* On the staff of the *Procureur Général* and qualified to act in his stead are Advocates General and Substitutes to the *Procureur Général.* It is the duty of the *Procureur Général* to arrange the order of the witnesses' appearance and to defend the public interest, and that of the Government, at each trial. In the

taking of testimony he occasionally suggests a question and quite often has a colloquy with the defendant's attorney, but he is far less active than the President of the Court. His principal task is the delivery to the jury of the argument for conviction.

If the accused person has no attorney he must be provided with one by appointment of the President, or *bâtonnier,* of the local bar association. The lawyer so appointed may not refuse to act except on motives deemed adequate by the *bâtonnier* or by the President of the Court. Next to the President, the attorney for the defendant is the most active participant in a French Assize trial. Not only may he question a witness after the examination of the President, but he may answer for his client the declarations of the witness. In all contentions and debates, including the final arguments to the jury, the defendant or his lawyer has the last word.

The person injured by the alleged crime may intervene, with or without counsel, as the civil party. In addition to aiding the prosecution, the civil party usually demands pecuniary damages or restitution of property. In murder trials the civil party is generally the widow, widower, child or parent of the deceased. If the charge be fraudulent bankruptcy or a series of swindling operations, there may be numerous civil parties represented by one or more attorneys. When delivering sentence the court also passes judgment upon the claims of the civil party or parties. The jury has nothing to do with the determination of civil liabilities, there being no juries in civil cases in France, and in consequence the Court of Assizes may render judgment for damages even though the jury's verdict carries an acquittal. Likewise, the Court may assess costs and damages against the civil party if it find the defendant's counter-claim well founded and the prosecution unjustified.

### Interrogation of the Accused

A characteristic feature of the French criminal trial is the interrogation of the accused by the President of the Court. This usually occurs at the outset of the "debates", as they are called, just after the reading of the indictment and the outlining of the case by the attorneys. It may, however, be postponed until witnesses have been heard. If there are several defendants, the President may question one at a time, either in the presence of the others or in their absence from the court room, as he judges best for eliciting the truth. The

interrogation always begins with a brief résumé, stated as a leading question from the examining trial record, of the defendant's life history and previous penal record. It then deals minutely with the facts and issues of the case at bar. During the interrogation, the defendant's attorney must preserve silence, unless the President permits him to interrupt. In the course of the examination, as well as during the interrogation of witnesses, the President is under no duty to refrain from expressing his opinion. In fact, he invariably does so, and his running comments upon the testimony developed, although putting him often in the *rôle* of prosecutor, are considered as a valuable aid to the jury in forming a true estimate of the facts. The following colloquy between the accused who was charged, in a recent Paris case with murdering his mistress, and the President, indicates the nature of the interrogation:

The accused: "It was that woman who put me in a bad way."
The President: "The witnesses will say that you fired upon her with much calmness."
The accused: "I have always worked; it is only necessary to look at my past."
The President: "Two condemnations for theft; and you were in prison at Marseille when she left there."

### Competence of Witnesses

Several classes of persons are not allowed to testify in the Court of Assizes. Among these are persons convicted of an infamous crime, near relatives of the accused, persons recompensed by law for denouncing the crime, and the civil parties.

It is still held by French jurisprudence that the temptation to falsify in favor of the accused is stronger upon a near relative than the oath to tell the truth. Relatives excluded from testifying are (1) all ascendants and descendants of the defendant, (2) the brothers and sisters and (3) the husband or wife, even after divorce. As an exception to the rule, testimony may be received from any of the relatives named, or from compensated informers or the civil party, if no objection is interposed by the *Procureur Général,* the civil party or the defendant.

The President is vested with discretion in receiving testimony from children under fifteen years of age. If he deems such a child of sufficient intelligence to understand the nature of an oath, he may

impose it, or he may, without oath, receive the child's declaration merely as information. Jurors naturally attach less weight to statements thus made than if made under oath, but no precise rule appears to exist which determines their evaluation.

After the witnesses produced by the *Procureur Général* and the civil party have been heard, the defendant calls the witnesses whose names have been supplied in advance to the court. If the name of a witness has not been notified, objection may be made to hearing him, and the President may rule him aside. If the testimony, however, is considered important, the President, in his discretion, may nevertheless receive the statement of the witness, either under oath or simply as information.

### Procedure in the Taking of Testimony

The witness has the right to make his principal statement in his own way and without interruption. At its conclusion the President asks the accused if he desires to respond to it. Under this permission, the accused or his counsel has the right to say "all that may be useful to the defense of the accused." He may question the witness "by the medium of the President," although in practice the questions are usually put directly, or he may make verbal answer to the statements of the witness. Colloquies and controversies thus become frequent; they may be cut short by the President when he believes that they have proceeded far enough. If exception be taken, the President's ruling is then reviewed by the court, consisting of the President and his two associates. Another instance of the court's revisionary control over the President relates to his decision as to whether or not a witness may be recalled for further testimony.

### Submission of the Case to the Jury

The order of argument, in the submission of a case in the Court of Assizes to the jury, is as follows: The civil party or his attorney speaks first. He is followed by the *Procureur Général* or his representative for the Government. The defendant or his attorney then speaks, whereupon the civil party and the Government has the right of reply. The defendant or his attorney then has the right to conclude, this right being guaranteed by statute.

Summing up of the case by the President of the court has been forbidden in France since the statute of 1881. It is the function of the jury to pass upon the facts and it is the duty of the President to present the issues of fact to them in a clear and concise manner. Complexity in such statements is condemned by French jurisprudence. While legal meanings of words, particularly those which denote crimes and motives, are necessarily involved, the court leaves to the jurors the application of such words according to their common signification, aided by the knowledge gained during the trial. The principal question, resulting from the statute, is the following: "Is the accused guilty of the commission of the particular murder, theft or other crime, with all the circumstances set forth in the indictment?" In a recent murder case at Paris the President put these questions to the jury. "Did the accused kill the deceased? Did he act with premeditation? Did he act in self-defense? Was robbery the motive of his action?" If the defendant offers in excuse a fact admitted by the law for the purpose, it must be embodied in an appropriate question. Where evidence of aggravating circumstances has been adduced, the jury must be asked if they find such circumstances to exist. A question as to the existence of mitigating circumstances is mandatory in all cases.

Aside from the essential questions bearing directly upon the guilt or innocence of the accused, the President has the right to present any question which, in the words of the law, forms an accusation different from the first in the sense that it is covered by a different statutory enactment, providing it is only the reproduction of the primary fact considered from another point of view and presenting another aspect. If several defendants are jointly tried, questions must be separately presented for each of them. In a case at Paris in 1928, involving 19 defendants charged with 77 crimes, the jury responded to 654 questions in 18 hours' deliberations.

Deliberations of the jury are secret. The foreman reads the questions and the jurors respond by written ballots in the affirmative or negative. After the ballots have been counted by the foreman, the results are noted and the ballots burned. A majority of the jurors decides the answer to any question. If they are evenly divided, the answer is cast in the defendant's favor. In delivering the verdict to the court the foreman must indicate that each question has been answered by a majority.

### The Sentence

A verdict of acquittal requires the immediate liberation of the accused, unless he is held on another charge. If he is found guilty, the *Procureur Général* expresses to the court his opinion concerning the punishment to be inflicted. The civil party is then heard as to his damages and the accused or his counsel may respond. Following these arguments, which are very brief, the President deliberates in low tones with his associates. This deliberation may occur in chambers. The sentence agreed upon is then pronounced by the President in open court and it is followed by the judgment regarding damages to the civil party.

### Appeals

Any party at interest, including the Government, the civil party and the defendant, may appeal from the judgment in the Court of Assizes. The Government may appeal from a verdict of acquittal but only when it is done in the interest of the law and without prejudice to the person acquitted. If the President should release the defendant following a verdict of guilty, the Government might appeal. The right also exists when an ambiguous verdict is returned or when all the questions have not been answered and the Court of Assizes has not required clarity or completeness. The civil party may not appeal against a judgment of acquittal or conviction, in so far as the defendant is concerned, but he may appeal if condemned to pay more than an acquitted or absolved accused had demanded of him. The defendant may appeal in all cases of condemnation. Three full days are allowed in which notice of appeal may be given to the clerk, making five days from the date of judgment.

All appeals from the Courts of Assizes pass directly to the criminal division of the Court of Cassation. This division consists of fifteen associate judges, or councilors as they are called, and a President. It usually takes about six weeks from the notice of appeal for the preparation and transmission of the record to the Court of Cassation. Within twelve or fifteen days from its receipt there the case is heard and decided. The Court of Cassation never judges on the merits but occupies itself exclusively with matters of law, except on extraordinary occasions when the three Chambers are united. If the judgment of the Court of Assizes is reversed the case is sent for new trial to another Department from that where tried.

According to the latest available figure, the number of indicted persons tried in the Courts of Assizes in 1926 was 1,922. Of this number 653 were acquitted and 1,269 convicted. The proportion of acquittals was 34 per cent. During the year 1929 a total of 5,897 criminal appeals were decided by the Court of Cassation, about two-thirds being affirmed and one-third being reversed. The number coming from the Court of Assizes has not been totalized but it was probably less than a third of the number convicted in that year. The proportion of reversals on such appeals is about 35 per cent.