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THE FRENCH CORRECTIONAL COURTS

DAMON C. WOODS[1]

Dealing with offenses intermediate between minor misdemeanors and major felonies, according to the common law classification, the correctional courts of France probably exercise a greater repressive influence upon crime than any other class of French tribunals. These courts in their operation present the following characteristics, which account in large measure for their efficiency: 1. Each court is composed of three judges, who act without a jury. 2. The President of the court directs the proceedings from beginning to end. 3. The discretion exercised is so extensive that few cases are appealed and only a small fraction of these are reversed. 4. Only one trial is possible and it always yields a decision; the court of appeals never sends a case back but re-tries it if necessary and renders a final judgment. 5. Civil liabilities arising from the offense are adjudicated in the criminal action.

The Tribunals.

There is one correctional tribunal for each of the ninety Departments of France. In the more populous Departments the tribunal consists of one or more chambers, which may be subdivided into sections. At Paris, for the Department of the Seine, there are now six chambers, each having two sections, and one chamber for cases against juveniles between the ages of 13 and 18 years. Each trial unit is composed of a president and two assessors, except that in trials likely to be prolonged, an additional judge may sit with the others, to act in the event one of them becomes incapacitated.

The correctional court is a part of the tribunal of first instance of each Department, this tribunal being divided into civil and criminal chambers. The president of the tribunal assigns the judges to their duties. At Paris it is customary for a judge to serve alternate years in the civil and criminal divisions.

Jurisdiction.

Offenses over which the correctional courts exercise jurisdiction are known as *delits,* as distinguished from *contraventions,* tried in the

[1]American Consul, formerly at Paris, France, now at Toronto, Canada.

police courts, and *crimes,* which go before the courts assizes. *Delits* are infractions of the law carrying a sentence of imprisonment of from six days to five years; some of them are also punishable by fine, either as an alternative or cumulative penalty. The more common *delits* include, among many others, thefts, swindling, abuse of confidence and embezzling, except in certain confidential relations, assaults upon the person defined as "blows and injuries," manslaughter, and negligent homicide. Forgeries are defined in the code as *crimes,* punishable by the court of assizes, but they are often "correctionalized" by being presented in the correctional courts as frauds. It is noteworthy that thefts and swindles are triable in the correctional courts without regard to the values involved. Thus the case against Madame Hanau, growing out of the "Gazette du Franc" operations, amounting to millions of francs, was brought before the correctional court.

Preliminary Procedure.

The preliminary examination of a complaint and the preparation of a case for trial are made with care and completeness. The original charge may be instituted by the police or judge of instruction, or by the *procureur,* or by a person addressing himself to the *procureur.* There are three classes of prosecutions, known as "flagrants délits," "direct citations," and "after information."

A "flagrant delit" is an offense of the grade of "delit" which has just been committed or which is about to be committed. The officers of the judicial police auxiliary to the Procureur of the Republic, including the commissioners of police, justices of the peace, chiefs of gendarmaries, mayors, etc., may act immediately, without waiting for instructions. At Paris, it is the rule to place persons thus arrested, after interrogation by the commissioner of police, at the disposition of the Procureur, either on the day of arrest or on the day which follows it. The Procureur's assistant who questions the individual may order his release if he find the accusation unsupported, or he may open an information and commit the accused to appearance before a judge of instruction, or he may cite him directly before the Correctional Tribunal for subsequent trial, or he may employ the direct procedure of *flagrant délit.* This procedure admits of no bail but requires the appearance of the accused before the Correctional Tribunal on the same or the following day. Upon such appearance the accused may demand a delay of at least three days in which to

prepare his defense; the court may likewise order the opening of a regular information if it considers the investigation incomplete.

The prosecution by direct citation is the citation of an individual to appear before the Tribunal at the request of the Procureur or a private person, known as the civil party. The defendant is not under arrest but the trial procedure is the same as in cases sent up by the correctional police.

In the procedure of "remanding after information" the judge of instruction institutes a regular "instruction." He issues process and examines the accused, if known and procurable, and the witnesses, together with any material evidence available. He often goes to the place of the offense and makes a minute inspection, with the aid of the police, the defendant and witnesses. This procedure is known as "reconstitution of the crime." It is frequently effective in drawing a confession from an accused.

In his examining duties the judge of instruction has full discretion and independence of action. He does not place the burden of the inquiry upon the prosecutor but carries it himself. In fact, the prosecutor is usually not present or represented at the hearing. In this as in subsequent stages of the proceedings, it is the judge who is the central figure, not as an umpire but as a diligent searcher after the facts. Upon completing his inquiry, the judge of instruction writes his observations and transmits the entire dossier to the procureur, if it relates to a *delit,* or to the procureur general if it reveals or suggests a *crime.* After studying the dossier the prosecuting officer recommends a *non-lieu,* a prosecution for a named offense, or further investigation. The judge of instruction receives back the dossier and agrees or disagrees with the procureur's recommendation. In nearly every case there is agreement, but if a difference of view appears, the dossier is referred, for a decision, to the "Chamber of Accusations," a commission of judges attached to the court of assizes. This chamber fulfills the functions of a grand jury in France.

Judicial Record of the Accused.

French criminal procedure places much importance upon the previous conduct of an accused person. No rule of law excludes evidence of a defendant's prior arrests or convictions, regardless of whether he has put his character in issue. The evidence is contained in a document known as the *casier judiciaire.*

The *casier judiciaire* was created in France by the law of November 6, 1850. Its purpose was to render accessible official proof of the penal record of any person inculpated in France. A previous law had sought to accomplish the same purpose by having notices of all convictions sent to the Ministry of Justice and the Prefecture of Police at Paris, but after a few years it was found that the accumulation of documents, without adequate indexing and filing, made it impossible to trace accurately a person's judicial history.

Under the present system, a notice of each conviction is forwarded by the procureur attending the court of its pronouncement to the clerk of the correctional tribunal in the district of the defendant's birth. The clerk of this court keeps an alphabetical file of all persons born in the district who have attained the age of legal responsibility. If the person covered by the notice is born outside of France it is sent to the file in the Ministry of Justice.

It might appear easy for an accused to prevent discovery of a prior conviction by giving a false place of birth, but as the registration of births is obligatory in France the falsehood would be revealed through inquiry of the court clerk and the vital statistics office of the locality declared. Furthermore, police inquiry of persons knowing the accused would usually be sufficient to fix his place of birth, even though he himself failed or refused to aid in the matter. In practice it takes an average of five days' time to secure a complete "casier judiciaire."

Trial Procedure

Trial practice in the correctional courts follows that of the Court of Assizes, except that due to the absence of a jury there is less of detailed explanation and an absence of dramatic exchanges between lawyers for the benefit of empaneled laymen. The President directs and controls the proceedings from beginning to end, using the attorneys to assist him in arriving at the facts. After the clerk has read the accusation, of which the defendant has previously been furnished a copy, the President develops the personal history of the defendant and the circumstances of the crime from the dossier before him. The defendant is thus put on the defensive from the outset of the trial. He is not required to answer but silence is often worse for him than confession and refusals to answer the President's pertinent questions are rarely encountered. After the witnesses have been heard, the procureur and the defendant's attorney may argue the case. Frequently the procureur does not speak at all and the Presi-

dent often cuts short the defense plea after five or ten minutes. Due to the absence of a jury and to the expeditious handling of the case by the President, four or five contested charges for offenses that would be classed as minor felonies in the United States are disposed of in an afternoon.

Criminal and Civil Issues Decided in Same Trial.

A feature of the trial of criminal cases in France is that civil liability charged to the defendant and growing out of the same transaction may be adjudicated in the penal process. The pleading of the claimant, known as the civil party, is simple; it may consist of a verbal notice to the judge of instruction at the institution of the process. Conviction of the defendant is not a pre-requisite to civil recovery; the court may acquit for the crime but condemn for damages through application of the law of tort.

While in many instances, due to the known insolvency of the defendant, there is no likelihood of more than a *pro forma* civil judgment, in others the civil remedy thus provided is substantial and it avoids the delay, expense and uncertainty of a separate suit before the civil tribunal. This advantage is notable in the large and increasing number of cases arising from automobile accidents, in which the charge of negligent homicide or negligent infliction of bodily injuries is coupled with a plea for pecuniary damages. If the defendant carried liability insurance the company may be joined with him on the civil phase and judgment rendered against both. A trial of this sort rarely consumes more than two hours; the President, after a brief consultation with his associates on the bench, announces the decision on the criminal and civil phases of the case, and this decision is usually accepted as final and conclusive.

Appeals.

Appeals lie from the judgments of the correctional courts to the courts of appeal. A feature of the appellate procedure in correctional cases is that the court of appeal reviews both the law and the facts. It invariably hears the defendant in person and it may, by an order to that effect, receive oral testimony from witnesses. The court has power to affirm the conviction, to increase or reduce the penalty assessed below, or to annul the sentence and free the defendant. In no event is the case sent back to the correctional court for another trial.

The measure of a trial court's efficiency in the correct application of the law is determined by its record on appealed cases. In 1929, for the district over which the Paris Court of Appeals exercises jurisdiction, 49,090 cases were tried in the correctional tribunals. Of this number 4,628 judgments, involving 5,269 defendants, were the objects of appeal. Affirmance of the sentence below was ordered against 2,649 of these defendants. Sixty-seven, who had been acquitted below, were condemned on appeal, while 305 convicted persons were acquitted by the appellate tribunal. For 1,089 of the others the penalty was increased and for 823 it was diminished. Sixteen cases involved questions of police court jurisdiction.

It appears from the foregoing that appeals were taken in nine per cent of the cases tried in the correctional courts of the Paris district. In approximately half the cases the judgment of the trial court was affirmed, in forty per cent the sentence was either augmented or reduced, and in only 305 cases, or seven per cent of all appealed, was the conviction annulled.

On law points a further appeal may be taken to the Court of Cassation, the supreme court of France. If this tribunal decides against the Court of Appeal, it directs the latter to enter a decree in conformity to the former's interpretation of the law.

The Correctional Courts as a Repressive Force on Crime.

In 1913 the correctional courts within the then borders of France judged 235,767 cases; in 1920, after the addition of the three recovered Departments, the number rose to 246,841. The post-war maximum, according to the latest published statistics, was reached in 1926, with 247,981 cases. Crimes prosecuted in the Court of Assizes decreased from 3,088 in 1913 to 1922 in 1926, while police court offenses fell from 714,869 in 1921 to 685,557 (exclusive of Colmar, not counted in 1921) in 1926.

Of the correctional cases tried in 1926, 23,627 defendants were released, 116,282 were condemned to imprisonment and 108,026 to fines only. The proportion of acquittals was 9.5 per cent, of condemnations to prison 46.9 per cent, and of condemnations to fines 43.6 per cent.

It is evident from the foregoing figures that over the period mentioned crime showed no increase in France, and this was due in great measure to the prompt, certain and vigorous action of the criminal courts. National figures since the year 1926 are not available, but

those for the Correctional Tribunal of the Seine show for 1929 a total of 34,833 prosecutions against 37,593 in 1928.

The Judges and Prosecuting Attorneys in France.

The rapidity and certainty of penal justice in France, in the correctional as well as in the other criminal courts, result in large measure from the admirable simplicity, logic and directness of the judicial procedure. The procedure itself, however, would lose fibre and fall a prey to narrow and tortious argumentation, with resultant technicalities and delays, were it not for the character of mind and temper of the magistrates who enforce it.

Entrance to the career of magistrate, which includes both judges and prosecuting attorneys, is regulated by the decree of August 21, 1906, issued pursuant to the finance law of that year. This decree provides that one-fourth of the magistrates may be named by the Minister of Justice while the other three-fourths are chosen by competitive examination. The initial service is usually as a supplementary judge or substitute procureur. The career is divided into numerous grades, there being twelve from supplementary judge to President of the Court of Appeal of Paris. Above this grade are special classes which advance to the highest judicial offices in France, viz.: First President and Procureur General of the Court of Cassation.

The progress of one entering the judicial career in France, as well as the interchangeability between the "sitting" and the "standing" magistracies and the territorial mobility of the judicial corps, may be illustrated by the steps in the official life of a recently deceased judge, Henri Jobert. After graduating from a law college with the degree of doctor of laws he was named supplementary judge at Bar-sur-Aube in 1905. Six years later he became judge of instruction at Tonnerre. In 1918 he was transferred to Auxerre and made *procureur.* In 1920 he was presiding judge of the civil tribunal at Bar-sur-Aube and in 1928 he became judge of the first instance of the Seine, being assigned to a correctional chamber.

Advancement is determined by joint action of a grading commission and the Minister of Justice. The commission consists of the President of the Court of Cassation, the Procureur General and four associate judges of that court and the directors of services in the Ministry of Justice. This commission classifies all the magistrates according to the qualifications displayed and character of service rendered. From the lists thus prepared the Minister of Justice makes periodic advancements and assignments.

Judges of all the courts in France above that of justice of the peace are irremovable, and the latter can be revoked only for cause, after an investigation and hearing. Above this grade the judges may be disciplined by the Court of Cassation sitting as a superior council of the magistrature.

Judicial salaries in France are low, although on a parity with salaries to administrative and executive officers, and with those to the higher officers in the army and navy. The salaries were increased to a new scale effective October 1, 1930, under which the judges of the tribunal of first instance at Paris receive 52,000 francs ($2,037.00) per year. Substitute procureurs at Paris receive the same amount, while the President of the tribunal and the Procureur each receive 110,000 francs ($4,309.80). The largest salary paid to a judicial official in France is 150,000 francs ($5,877.00). It is received by the President of the Court of Cassation and by the Procureur General attached to that court.

Despite the modesty of the pecuniary compensation, the magistracy in France continues to attract the highest order of legal talent and personal integrity. This attractive force is due to the secure tenure, separation from politics, independence of action and honorable place in public esteem of the magisterial office. Bribery and corruption of judicial officials are exceedingly rare in France. The scandals that break about the heads of politically chosen, short term judges in some cities of the United States, have no counterpart in France, where judicial selection and advancement are in no way dependent on universal suffrage or boss control.

A fault for which French magistrates are sometimes criticized is the tendency, on the part of the over-ambitious members, to cultivate unduly the favor of higher officials in the career or in the Ministry of Justice. This is a frailty found in all administrative hierarchies; in the French judiciary it is restrained by a strong sense of decorum, self-respect and the desire to retain the full respect of one's colleagues. There exists an *esprit de corps* which animates judges and prosecutors with the conviction that the surest way to advancement is through the performance of superior service and the development of capabilities for more responsible duties.