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VII—FRENCH COURTS.

They Are Not Much Like English Courts and They Resemble Those of America Still Less.

President Dupin, the greatest French jurisconsult of the century, once said: "If I were accused of having carried off the towers of Notre Dame in my pockets I would run away." A more severe criticism upon our judicial procedure could not have been pronounced. But is it too severe? Could you believe, for instance, that upon the least suspicion a French magistrate may order, on his own responsibility—a responsibility which no one has a right to question—a search or an arrest in any private house? He may issue such a warrant upon any presumption uncorroborated upon oath.

In France we give almost unlimited arbitrary powers to a legion of magistrates, whom we expect to live in a state of independence on a salary of $300 to $500 a year, and who are, for the most part, the failures of our bar. I warrant that there are more judges in a French town of 50,000 inhabitants than in the whole of England—quite as many, at all events. Judicial reforms have long been demanded by the Democratic party, but none have been made; and I am bound to say that nothing excites public minds in France less than what passes in the courts of justice. When the Frenchman has paid his taxes he thinks the government ought to see that everything is right. There are few countries, as I have said elsewhere, in which Democratic tendencies are more marked than in France. In spite of this, public opinion does not concern itself about judicial proceedings; because there is no country in which authority is less respected, although, strange to say, there is not one in which it is more feared and more easily submitted to. We seem to accept all forms of tyranny in order to shirk all responsibility. Democracy with us chiefly consists in holding up to ridicule a despotism, the acts of which we in turn approve by holding up to ridicule those who are the victims of it.

Let us see how French justices proceed with "Frenchmen in trouble."

When, in England, a man is arrested and informed of the charge brought against him, he says, "Very well, you will have to prove it;" and the inspector at the police station says to him, "I must caution you against making any statement—in fact, anything you say will be used as evidence against you." When, in France, a man is accused—say, for instance, of stealing a watch—he is brought before the commissary of police, who invariably says to him, "You are charged with stealing a watch; the best thing you can do is to make a full confession, and the judge will be lenient with you."

If he is guilty and knows that the case is clear against him, he immediately makes a clean breast of it, and, as a rule, is quickly and leniently dealt with. But if he is innocent, or, if guilty, he thinks he can get out of the scrape, he of course answers, "You are mistaken; I am not guilty," and his troubles begin. He is sent to prison, and the following day is taken before the examining judge, called juge d'instruction, not in public, but in a private room. There this magistrate says to him point blank: "You say you are not guilty, of course. If we were to listen to all of you, none would be guilty. Now, enough of that nonsense. You are charged with stealing a watch; prove that you are innocent." Now, if the prisoner is guilty, it must be difficult for him to prove that he is innocent; but, for that matter, if he is innocent, it may be just as difficult. If the first comer were to accuse me of having stolen his umbrella a few days ago, I could more easily say that I was innocent than prove it.

"So you persist in your denial," says the examining judge to the French prisoner; "very well, I will send you back to your prison. I hope that next time I send for you you will have reflected, and discovered that the best way to serve your own interests is to make a full confession." Now this is evading the law, which says that a man arrested shall, the day after his arrest, appear before a judge. The letter of the law is carried out, but not the spirit; for no examination takes place, and very often no sworn evidence exists. The prisoner goes back to jail, and the magistrate begins to get up the case against him. If the accusation is of a serious character, the man is placed au secret, that is to say, that not only he cannot communicate with his friends, much less see them, but he cannot even see his counsel or receive any legal advice. How long is he to remain in preliminary imprisonment before being sent to a tribunal?

This entirely depends on the good pleasure of the examining magistrate who is allowed by the law to keep him a year under examination. If at the end of the year the case is not sent for trial, the prisoner is discharged. I should, however, hasten to add that, as a rule, for an ordinary theft, or an offense that does not require long investigation, the accused undergoes only from two to six months' preliminary imprisonment before he is brought before his judges. During that time he is brought once or twice a month to the Palais de Justice, to be asked by the judge if "he still persist in his denial." These visits to the examining judge are most dreaded by French prisoners, especially in Paris. They sometimes have six, eight hours to wait for their turn, in a little dungeon six feet square, where they get neither food nor air. It is nothing short of torture, this inquisitorial examination in private. When in the evening the prisoner sees his cell again, it must look to him like paradise compared to the hole he had to creep into during the day. At last, one day, he receives intimation that his trial will take place.

But, now, mark well where the system is wrong. The prosecuting magistrates, called the magistrature debout (because they prosecute standing), and the judging magistrates, called the magistrature assise (because they try cases in a sitting position), belong to the same set. Indeed, the prosecuting magistrates are in time promoted to be sitting magistrates. The prosecution is not, therefore, independent, as the defense is. The prisoner's case is settled before he appears in court; for both prosecuting and sitting magistrates have held a consultation over it, and the speech of the prosecution is merely delivered for form's sake.

The bench of the Police Correctionnelle is composed of three judges, so that at least one may be listening when the other two are asleep. These men have power to award as much as five years imprisonment and five years' police supervision. Nothing is more prosy than the proceedings of this court of justice unless some waggish prisoner be bent on enlivening them by exhibiting his wit in his answers. The following pass of arms is still fresh in the memory of Parisians.

"Prisoner," said the presiding judge one day, "you say you are not guilty of robbing the prosecutor; but he will produce three witnesses who saw you in the act of snatching his watch from his person."

"Three! Is that all, M. le President? Why, I could produce thousands who didn't."

I remember one man who was accused of stealing geese. Although plucked by the prisoner, the prosecutor maintained he had recognized them as his own.

"From their consumptive appearance, I suppose!" exclaimed the prisoner, who, in France, can always speak at his trial. "And how is it you heard nothing when I stole them? You ought to know that geese will make a noise when interfered with. Why, M. le President, the prosecutor seems to be a most ignorant man. If he had read his Roman history, he would know that the geese woke up the Romans one morning by their noise, and warned them of the approach of the Gauls."

The scholarship of the prisoner was not appreciated by the magistrates, who gave him three months' imprisonment. I was present in the room, and I remember that the prisoner, as he was removed, exclaimed, "The magistrates are as ignorant as the prosecutor!"

One of the most frequent customers of the Police Correctionnelle is the vagrant. In France a man is taken up for having no recognized means of subsistence. The first time he is convicted of vagrancy he is sentenced to three months' imprisonment. When he comes out of prison he may have five or six francs in his pocket, if he has been industrious. His position is precisely the same as it was before he went in, except that he is now a man who has been to prison, and therefore work, if he be ever so anxious to get it, is not so easy to obtain. He fails to find employment, of course, and his five or six francs are soon exhausted: in a few days he is taken up again.

I quite appreciate the answer once given by a fellow who was for the second time charged with vagrancy.

"What are your means of subsistence?" asked the presiding judge.

"Why, I have lived on them," answered the prisoner.

This second time, besides a term of six months' imprisonment, the accused has to undergo from two to five years' police supervision, which means that he must report himself once a week at the police station. Considering that, by law, Paris and the five or six largest towns of France are closed to him, it would be just as well, and much more human, to give him transportation for life at once. How is he likely to get employment in a town where he is seen paying his weekly visit to the police station? In the large cities he might have had a chance.

When society, in the name of the law, deprives a man of his liberty, it undertakes to provide him with the necessaries of life; but if it discharges him from prison, telling him he must provide for himself, and at the same time imposes constraints upon him which make it practically impossible for him to earn an honest living, what is the consequence? Vagrancy brings a condemnation and police supervision; police supervision brings impossibility to obtain work; impossibility to obtain work brings vagrancy. This is the vicious circle in which he is virtually enclosed.

If the proceedings of the Police Correctionnelle are dull and prosy, those of the court of assizes offer a different sight. We are now in a perfect theatre. Nothing is wanting but stage boxes, and the division of seats into stalls and galleries. The prisoner himself often forgets his awful position, and thinks of the public who gaze at him. He feels like a sort of hero, the actor in whom the interest of the grand spectacular drama concentrates. Ladies of the highest society flock to the court, duly provided with scent bottles and extra pocket handkerchiefs. If, as is the case in France nine times out of ten, a woman is the cause of the prisoner's terrible position, they expect sensational scenes that would draw at the Porte St. Martin theatre, and they are seldom disappointed. At last a little bell is rung. All are silent and breathless. The accused, accompanied by two gendarmes, enters the court, and sits on a high bench, well in view of everybody. Then come the three judges, with their scarlet gowns, followed by the advocate general, or public prosecutor. All take their seats solemnly. The performance is about to begin.

"Prisoner at the bar," says the presiding judge, "stand up, and give me your name and surname." Then the examination of the accused by the judge begins. I cannot help thinking that the French are right in examining the prisoner before the jury. The French eye is remarkably quick to detect expression, and it seldom fails to understand the movement of the muscles of the face. Emerson said he knew an experienced counsel, who once said to him that he never feared the effect upon a jury of a lawyer who did not believe in his heart that his client ought to have a verdict. Faces never lie. Truth tyrannizes over the unwilling parts of the body. No man need be deceived who will study the changes of expression. When a man speaks the truth, in the spirit of truth, his eye is clear and steady. When he lies, his eye is dim and muddy, and sometimes asquint.

When the prisoner's examination is over, the proceedings continue, as in England, with the evidence of the witnesses, the speech of the public prosecutor, and the speech of the counsel for the defense. For the last few years the summing up of the presiding judge has been done away with; and a good thing too, for this summing up used to be a second speech for the prosecution. Now the jury retire to consider their verdict. In all cases, from murder to assault, from forgery to ordinary theft, the jury have to answer the two following questions: 1. Is the prisoner guilty of the crime he is charged with? 2. Are there extenuating circumstances? Take murder, for instance. The law itself makes no distinction between the man who has committed murder in a moment of passion, or jealousy, and the cold assassin who has long premeditated the death of his victim to satisfy the basest of cravings; but humanity does.

A French jury will always award "extenuating circumstances" to a prisoner who may be supposed to have committed murder under the influence of love, jealousy, revenge or despair—love especially. They will not uncommonly acquit a man, if his character is otherwise irreproachable, who has killed an unfaithful wife or her lover. Besides, the idea of capital punishment is abhorrent to the French; and the jury will always try to find extenuating circumstances to avoid sending a fellow creature to the guillotine. And even when their consciences will not allow them to find these extenuating circumstances, they fondly cling to the hope that the president of the republic will commute the sentence of death to one of penal servitude for life. No wonder that there should be relatively so few executions in France; and no wonder that, when one takes place, there should be a little excitement over it. If the French executed criminals as freely as some of their neighbors do, they would in time get used to it and make no fuss about it, and would thus save some foreign reporters the trouble of sending to their newspapers sensational accounts of "Exciting Scenes at the Scaffold."

To turn to less somber subjects, I should like to say a word or two upon a kind of imprisonment that the republic has almost entirely done away with—I mean the imprisonment for press offenses. Under the empire Republican journalists often got several months' imprisonment for writing violent articles against the emperor or his ministers. There was really nothing very terrible about these condemnations except the name of the thing. At the prison of Ste. Pelagie special quarters were reserved for such delinquents, and they were tolerably comfortable quarters, too. It is true, the prisoner's door was locked at night by some one else on the outside instead of by himself on the inside; but that was almost the only thing that could recall to him his position. All day long he was free to receive friends from the outer world. One would arrive with the latest literary sensation, another with the foundation of a good lunch, and a right merry time was spent. When nothing more exciting offered, No. 8 could call on No. 7 in his room and beguile the hours with a chat or the composition of a newspaper article. The director himself would call and see that ces messieurs were happy and comfortable.

The amusing part of the business was that the populace imagined these poor journalists to be languishing on damp straw and living on bread and water for fighting their battles. When the prisoner came out he was a hero to be worshiped, and his sojourn at Ste. Pelagie often led to promotion and sometimes to a seat in the house of deputies. If it did not procure him this honor it was a powerful testimonial in case he ever needed another journalistic post. He was always proud to add at the foot of his list of recommendations, "Have suffered three months' imprisonment at Ste. Pelagie."

Press offenses were tried in a certain department of the Paris correctional police court called the sixth chamber, and republican journalists had this name on the brain. One day a journalist friend of mine, in search of apartments for himself and his wife, entered a house where some were to let. He applied to the concierge, who showed him over the place:

"You see," said the concierge, "there is a drawing room, a dining room, three bedrooms."

"Well," said my friend, "that makes five rooms."

"Oh! but besides," added the man, with a smile, "we have a sixth chamber"——

That concierge must have wondered for a long time why the journalist took to his heels so suddenly.