

## THE FRENCH JURY SYSTEM

FRANCE has never adopted the principle of jury trials in civil cases.

For criminal trials, it was introduced during the Revolution in 1790, and by a law of the next year any qualified elector could be chosen as a juror. It has never, however, been extended beyond the decision of the issue between the accused and the public. If (as is permitted) when the offense for which the prosecution is brought has caused pecuniary injury to some private individual, he joins himself to the cause, as a party (*partie civile*), and claims judgment in his favor for the damages which he has suffered (*dommages-intérêts*) his demand is disposed of, in case of a conviction of the defendant, by the judges holding the court. The same course is taken when there is an acquittal, and the defendant claims damages from some private individual who has instigated the proceeding, for a malicious prosecution.<sup>1</sup>

Napoleon I was afraid of juries. His seat was too insecure. In his code of criminal procedure the class of persons from whom they were to be selected was greatly restricted. Only those were eligible who were electors (under the Napoleonic scheme of electoral colleges) or who held administrative offices, or belonged to a learned profession, or were notaries, bankers or brokers, or were employees of the administration having a salary of at least \$800, or who were specially selected by the minister of the interior on the nomination of the prefect of the department. The government could depend with some assurance on any jury chosen from such a circle, particularly as the prosecuting attorney had a large freedom<sup>2</sup> of peremptory challenge.

While the English number for the jury, of twelve, was preserved, a majority of more than seven<sup>3</sup> could render the verdict.

If, however, the court (which was to be composed of several judges) were unanimously convinced that a verdict of conviction was wrong, they could grant a new trial.

The Republic of 1848 put matters back where they were under the first republic, making any elector of the age of thirty eligible for jury duty. A few years later, Napoleon III turned over

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<sup>1</sup> Code d'Instruction Criminelle, Art. 358, 359.

<sup>2</sup> Code d'Instruction Criminelle, Art. 199.

<sup>3</sup> Art. 347.

the preparation of the lists to official commissions in each department, which were really arms of the executive power. The month after he was deposed, the temporary government of national defense restored the scheme of 1848. Soon after the present republic was organized, during the presidency of Thiers, a new system was adopted which is still in force.

This was set up by the law of November 21, 1872, and its main provisions are these:—

Jurors must be at least thirty years old. They must be in the enjoyment of political and civil rights. Household domestics and servants on wages, convicts, bankrupts, ministers of religion, certain public functionaries, and those who do not know how to read and write French, are excluded. Men of seventy; those who live by means of daily manual labor; and those who have already served during the same year or the year next preceding, are excused.

A list is annually made up for each canton by a commission consisting of the local justice of the peace (*juge de paix*) and his assistants with the mayors of each commune. They pick out a certain percentage of all its citizens who are not disqualified, selecting whom they please.

These lists are transmitted to the clerk of the trial court of the *arrondissement*. Another commission, consisting of the presiding judge of the court, the justices of the peace, and the members of the legislative council of the department (*conseillers généraux*) then strikes off half the names. It may also add new names, not exceeding in number a quarter of those in the first lists. Before each term of court forty names are then drawn by lot from the final list, as the jurors for the term.

By direction of the government the justice of the peace is to explain to his associates in making up the first list, that only those are to be put upon it who "by approved morality, a character firm and independent, and an intelligence sufficiently developed, are capable of fulfilling the high mission confided to them by Society." This sounds well, but the advice is by no means always followed. Many good men never get on the list. The selection is largely governmental; and governments have their reasons sometimes for preferring dull men to brighter ones, for such functions. Dr. Gabriel Chervet, the *substitut du procureur général* at Aix en Provence has recently avowed, publicly, over his signature, that "magistrates, lawyers, publicists, are generally agreed in acknowledging that our

actual *bourgeois* jury shows too often quite an inferior condition of mental intelligence (*mentalité*),” and quotes with approval an observation of M. Jean Cruppi that the law of 1872 constitutes a class jury,—a jury of the middle class, uncrowned by intellect and resting on no solid foundations.

M. Cruppi has advocated the addition to the list of the Faculty of the University, the presidents of Chambers of Commerce and Tribunals of Commerce, and the Presidents and Vice Presidents of the “*Conseils de prud’hommes*,” the latter suggestion looking to the introduction of both manufacturers and their workmen.

Senator Victor Leydet has proposed to restore in substance the practice of the first two republics. He has recently brought forward a bill for an Act putting any citizen enjoying civil and political rights and on the electoral list, on the jury list also, provided he is between forty and sixty years old, and can read and write. Excuses will be received on the ground of ill-health, other public duties, or serious injury to the man’s family should he leave them to attend court.

The last proviso suggests one of the obvious defects in the present system. No jury fees are paid to jurors residing in the court town. Those living at the distance of two kilometres can demand about sixty cents for each myriametre traveled, towards indemnifying them for their necessary traveling expenses. Nothing is paid by way of remuneration for services.

Senator Leydet’s bill proposes a change in this respect, letting the government, from time to time, fix a small compensation for the jurors in each department, according to its particular conditions, of say not over ten francs a day.

Some of the critics of this plan make the objection that ten francs would not begin to support a workman’s family at home, and at the same time himself at a distant town, and that it would be better to excuse all wage-earners from jury duty. This objection seems somewhat academic and illusory. The wage-earner in modern society likes to be treated like any one else. If he does not lay up much, himself, he probably belongs to some labor organization which has, or has the means of accumulating, considerable funds. It would be a natural step for such organizations to take to assign benefit-indemnities to members summoned to do jury duty. This would lend dignity to the laboring community and go to give better assurance of its rights before the courts. Great Britain pays noth-

ing to her members of parliament, but funds are freely given to support John Burns and the Irish contingent in the House of Commons. It would be so with the French wage-earner on the jury.

In January, 1904, the Minister of Justice, M. Vallé, announced his general adhesion to the views of Senator Leydet. He would, however, adhere to thirty as the *minimum* age. The matter will soon come before parliament for decision; and it seems probable that some steps in the way of reforming the present system will be adopted.

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