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THE TRIBUNALS AND THE ADMINISTRATION OF JUSTICE IN
THE EMPIRE OF FRANCE.

ONE can scarcely compare the courts in different countries, without the hazard of making unjust or unfounded inferences. And still there is no one thing upon which the real character of free governments, and indeed of all governments, more entirely depends. But there is very much in the mere organization of the courts or judicial tribunals of the French Empire, to indicate the energy and decision with which the government is administered. It is a perfect system of superiority and subordination, from the humblest police magistrate to the High Court of Cassation.

In a few days' visit to the Palace of Justice, although accompanied by a very intelligent advocate, who was entirely competent and very ready to explain all which came under review, one could scarcely expect to acquire very accurate information in regard to the detail of so complex a system as that of the judicial tribunals of a great empire, like that of the French. But some of the more important points of difference between our own and the jurisprudence of the French, and the comparison which each bears to that of England, may be briefly noted.

The procedure in France, as in most of the Continental countries, is according to the principles and practice of the Roman civil law. In the trial of civil actions of every grade no jury is allowed, the judge deciding everything according to his own sense

of justice and propriety. And, as would naturally be expected, where every thing depends upon the arbitrary discretion of the judge, testimony of almost every grade of conclusiveness, or the contrary, is received, and it often happens that the case is finally made to turn upon very slight circumstances, and is really decided upon evidence, in itself, of no great significance, and which, upon the more exact and refined rules of the English common law, would scarcely be considered competent. But this is a result not very different from that which often occurs in jury trials at common law, where causes are made to turn, quite as often, perhaps, upon the bias of the jury, religious or political, or the last words of able and eloquent counsel, or of the judge in summing up, as upon the testimony given in court, and in that way, perhaps, more complete justice is effected.

The French jury, in the criminal courts, consists of twelve, but unanimity is not required, the voice of a majority being sufficient in ordinary cases, there being some few exceptional instances, where the concurrence of two-thirds is required to give a verdict. We sat for a short time in the same court-room where the attempted or would-be assassin of the Czar, Berezowski, had been tried a few hours before. The same jury and the same judges still continued the session; the judges in their scarlet robes, and the minister of justice, in the person of the prosecuting attorney, clad in the same garb, occupying a seat half-way between the bar and the bench. The presiding judge called upon the accused, sitting between two *gens d'arme*, to plead, who stood up and stated briefly their plea, and whether they had or desired counsel. The judge then administered a long oath to the jury, which seemed to embrace a kind of charge as to their duty, and, at the close, called upon each member of the panel, by name, who gave his assent by raising the right hand. The representative of the minister of justice then proceeded with the trial, first examining the accused, giving him the full benefit of his own story, if that can fairly be regarded as any benefit, which may, we think, be considered as somewhat questionable.

There is in each *arrondissement* throughout the empire an Imperial tribunal to hear appeals from all the courts of first instance in that *arrondissement*. Paris, with some few of the adjoining districts, constitutes one *arrondissement*, and has its Imperial Court for hearing appeals from all the courts of first instance within that

district or arrondissement. We listened to a brief argument in this court from an advocate of great zeal and energy, who spoke in a very high key, and after reading some ten minutes from a manuscript, closed by an impassioned appeal to the court, which seemed to be regarded by them as so much matter of course as to produce no interruption of conversation between the different members of the court, which had very much the appearance of making light of the graphic flourishes of the argument, but which we have no doubt had no such appearance to the speaker. The tribunal, consisting of nine judges, or about that number, had certainly very much in their looks to recommend them. They were more youthful and had more the appearance of brilliancy than any court we had seen since leaving America. One would naturally suppose, from their looks only, that they possessed full competence, both of learning and ability, for the satisfactory discharge of their important and responsible functions, and that both their offices and their salary were placed beyond peradventure by the tenure under which they were held and the stability of the administrative power.

The judges in France hold office during life, or until the age of seventy, in all the courts; and until seventy-five in the High Court of Cassation. The distinction may be not without reason, since by such a provision, and by removing the most experienced of the judges of the subordinate tribunals into that high tribunal, as vacancies occurred, there would be constantly found in the court of last resort, a considerable proportion of judges of largest experience and most matured wisdom, with presumptively an equal, if not greater amount of learning, than could be secured in any other mode. And by extending the term of holding office in that court to seventy-five, the services of those judges who retained full strength to an exceptional period could be continued in the court of appeal.

It is certainly not a little wonderful that so large a proportion of the American states should prefer to have the office of the judges, from the highest to the lowest, dependent upon popular elections, at short intervals, when the experience of England and France, and of all governments, where there is any pretence of consulting the popular will in administrative functions, has shown most unquestionably that the rights of suitors and of those accused of crime, are most wisely consulted in making the judges

as nearly independent of all popular or administrative influence as is practicable. This is not a question which we propose to discuss here. But we cannot forbear to express our matured and settled conviction that the American people are acting under wrong impressions in the conclusion which seems everywhere to prevail, that judges are more reliable when dependent upon popular impulses, or, in other words, when not above being affected by the prevailing popular sentiment. There is no possible instrument more susceptible of easy and unjust perversion by bad men, or which bad men more often use for the accomplishment of their own base purposes than a suddenly excited and superficial popular impulse. And there is, of course, nothing through which a timid or time-serving judge would be more readily reached, or which would more naturally be resorted to for that purpose. The history of all judicial murders, and it is a dark page, and one by no means restricted to narrow limits—is marked at every step by the most awful extremes of popular frenzy. Neither Charles I. or Louis XVI. were among the most arbitrary or tyrannical of the English or French sovereigns. And there can be no fair question in the mind of any sound lawyer and loyal man that both these men were really the victims of rebellion and treason, and that those men who carried them to the scaffold would, in a change of relations, have been guilty of the very same offences which they affected to punish; in greater measure. That, indeed, was abundantly proved in the subsequent history of the two governments. And still those acts had the most unquestionable sanction of present popular sentiment. And it is equally true that the monarch whom the English people in the short period of half a generation recalled to the throne with shouts of acclamation, was in no sense the equal, either in ability or virtue; of his unhappy father, who, by the verdict of the same popular sentiment, justly suffered the penalty of death for imputed crimes of which he is now, by the united voice of the nation, regarded as not guilty, and which his idolized son was and is considered to be guilty, in intent certainly, if not, in all cases, in act. But it is perhaps the most conclusive argument in favor of the independence of the judiciary and of its superiority over all popular and political influences, that these calamitous consequences of popular frenzy, to which we have just alluded, both in England and France, have been the primary

and efficient cause of establishing their judicial tribunals upon the high vantage-ground of absolute and unquestionable independence. And it seems wonderful that so unequivocal a testimony of historical experience should not be more heeded by others.

There is one marked distinction between the jurisprudence of the English common and chancery law, and that of the Continental countries, based upon the Roman civil law, in regard to which there seems great ground for difference of opinion. In the English courts, and equally in the American, there is always supposed to be some precise technical rule by which the competency of each particular portion of the evidence is to be measured, and by which it must be rejected if found incompetent; and its effect in the case is supposed to become thereby entirely removed. We know that in practice this is not always possible to be done, and that causes will thus sometimes be determined upon the bias of mind unconsciously produced by the knowledge or the belief of the existence of incompetent evidence. But in the Continental countries almost everything offered is received by the judge. And in the trial of matters of fact before the common-law courts in England and America, a somewhat similar rule prevails, on the assumption that the court will be able to eliminate the portion of evidence which is incompetent, and only give effect to that in determining the case. And in the trial of cases in equity, a somewhat similar course of practice prevails, in allowing all fixed and immovable exceptions to the competency of evidence to be reserved, and passed upon at the final hearing of the cause. But in France, we found on consultation with the most eminent members of the bar, there existed a very general impression that their courts were enabled to do more perfect justice, in the particular cause, by disregarding all mere technical exceptions to the evidence, and giving every species of proof just such weight as its impression might be in the mind of the judge. It is asserted there, that the judge is never obliged to say, as is sometimes done in England and America, that although he has not the slightest doubt of the entire soundness of the claim or defence, it cannot be allowed, by reason of some formal defect.

There is another peculiarity in the administration of justice in France, which seems very singular to those who have not seen its practical operation. It grows out of having a separate department of justice in the cabinet, and a distinct minister of justice,

who takes cognisance, not only of the administration of criminal law, but who, to a certain extent, assumes the supervision of the civil department of judicial administration, by having some subordinate agent or minister always present in all the higher courts to listen to the trials, and, whenever he deems it of sufficient importance, to give his own views to the court in regard to the proper determination of the cause. Upon our first entering the Court of Cassation, the minister of justice, standing within the enclosure appropriated to the judges, was reading from an extended manuscript a formal and elaborate commentary upon a cause, the argument of which had been closed the day before, or perhaps a few days before. It gave one, whose views of judicial administration were derived from courts constituted like the English or American, the idea of subjecting the courts too much to cabinet or governmental influence. It seemed very much like converting the court into a jury, and requiring them to listen to the comments of a superior. We have no means of forming any judgment upon the effect of any such course of trial; but we should expect, that it would be likely to be of considerable weight in the determination of causes, if it were so managed as to beget respect, which would certainly be desirable and likely to occur in the administration of a government, so prudent and popular as that of the present Emperor of the French. An able and learned minister, in such a position, could scarcely fail to acquire great control over the decision of causes, and it would enable the ministry to exercise almost irresistible power in the determination of causes of international importance. We found the leading advocates of the French bar seemed to feel the importance of having causes of any considerable public interest, which came before the Court of Cassation, favorably introduced to the minister of justice, and, if convenient, by some advocate in the interest of the administration, or who was supposed to have its confidence. The working of this plan, which has existed for a very long period in some European countries, has not been specially objected to by suitors, or by any one so far as we know; but we cannot but believe it will be a long time before the American people will be prepared to submit to the existence of any such supervisory control over the administration of justice.

It is impossible not to admire much which exists in the governmental administration in France. It is unquestionably an able

and benign government, and one which gives great satisfaction to the people. It is wonderful how little of aristocratic effect or pretension meets the eye of the traveller in Paris, and most of that character which one does find here has more the appearance of a temporary importation than of being entirely indigenous.

There is, too, in the municipal administration of the large towns of the French Empire, a very surprising energy and zeal for improvement. The entire city, or town, of Paris, extending over many miles, is being pervaded by the opening of great thoroughfares with continuous lines of trees upon each side, and flanked by extended blocks of the most substantial and beautiful stone buildings, thus giving the entire city almost, the appearance of a newly built town, with an air of great cleanliness and neatness. This, doubtless, has some disadvantages in constantly removing the evidences of date. All this is done by the municipality of the district. The proprietors of the land and buildings are required either to build, in conformity with the plan furnished by the public authority, or else to sell at reasonable prices. If the proprietors, whether owners or lessees, elect not to build, and demand such prices, either for value or indemnity, as is deemed exorbitant, experts are selected, and all questions of indemnity or compensation are referred to them—and it is said that, practically, no cases of dissatisfaction occur. It seems to be the chief study of the French government, in every department, to give satisfaction to the people affected by its acts, and in doing so, to consult the future as well as the present, and to act upon the assumption, that the subjects of the empire will be controlled by considerations of reason and propriety rather than by caprice.

There may be much in the genius of the people to favor the result, but it cannot fail to strike all beholders alike, that in all departments of governmental administration, as well in the judicial as in the legislative tribunals, and equally in the multiplied ramifications of the executive bureaus, everywhere and at all times, the one great occasion for wonder and admiration is, how it should happen that every one, almost without exception, is made to feel so completely satisfied with all that befalls him, and equally with all which is inflicted upon him. It must be admitted that this is a great desideratum in government, and especially in the judicial administration. We have always regarded it as of