THE DREYFUS CASE.

The Dreyfus affair has at last come to a close. During the five years that have elapsed since the arrest of Alfred Dreyfus in October 1894, the name of no man has so constantly and so prominently found a place in the newspapers. From the very commencement the proceedings in his case have engaged the attention, at times even wearisome, of the whole civilized world. People in all countries have watched his fate with anxious sympathy. The excitement reached its fever-height during the recent trial at Rennes and enormous sums of money were expended by the leading newspapers to provide the public with a daily report of the proceedings. When the verdict of the Court Martial against Dreyfus was announced, the thrill of indignation which ran through the world was unique in its intensity and in its breadth. Seldom has there been a more sublime spectacle than this, of a world in anger at the outrage which had been perpetrated against justice. The quickness with which public opinion was focussed and the quickness of the explosion of feeling which followed are triumphs of the modern facilities of communication. The tension of public feeling has now been reduced by the pardon, however ungracious, granted by President Loubet. It is a strange circumstance that while the excitement outside France was one of sympathy for Dreyfus, the excitement in France was one of unmitigated antipathy to Dreyfus. Now, what is the reason of the importance attached to this case from the very beginning and of the opposite feelings it has evoked within and without France? Briefly stated, the charge against Captain Dreyfus was that he sold important military secrets to Germany. The charge, if duly proved, would certainly have justified the punishment of Dreyfus. But it was not proved in any manner which would satisfy an unbiassed or dispassionate tribunal, and French public opinion was wrought to a state of frenzy which
incapacitated it for forming a calm judgment. Dreyfus has the misfortune to belong to the Jewish race and hatred of his race combined with hatred of Germany and adoration of the army inflamed the minds of the French people against him. To the public outside France, the interest of the case lies in the evidence it affords of corruption in the General Staff of the army, of the callous indifference to justice and humanity bred by the military spirit and of the unfairness of the French criminal procedure to persons accused of crimes. We are, however, more concerned with the legal aspects of the case, the light which it throws upon the French law of criminal procedure and evidence. To enable our readers to form an idea of their procedure, we shall give a very brief account of the case.

Alfred Dreyfus began his career in the army in 1882 as a Lieutenant in an artillery regiment. In 1893 he was appointed probationer on the General Staff or governing body of the French army and was in the latter part of 1894, when the scene opens, a member of that staff. At this time Colonel Sandherr was at the head of the Intelligence Department of the General Staff and Colonel Henry was his assistant. The Intelligence Department had bribed the charwomen at the foreign embassies to pick up and bring to them scraps of letters and documents which had been torn up and thrown into the waste paper basket. In September, 1894, the charwomen at the German embassy handed over to the Intelligence Department the fragments of a letter or bordereau which had been received by Colonel Schwarzkoppen, the German military attaché and torn up by him. This bordereau offered information in regard to important military secrets and stated that the writer was setting off to the manœuvres. The military secrets of France had for a considerable time been in the possession of Germany and the Intelligence Department was naturally anxious to discover the author of the bordereau. Besides the handwriting of the document there were clues furnished by the contents of the document. The writer was probably an officer of artillery and a member of the General Staff and must have attended the manœuvres of 1894. Dreyfus was an officer of artillery and was a member of the General Staff. But he did not attend the manœuvres of 1894 and on the date of the bordereau he knew that he
was not to attend. The handwriting of the bordereau was
pronounced to be different from that of Dreyfus by M. Du Gobert
the expert for the Bank of France. But suspicion fell on Dreyfus,
because he was a Jew and because he had been known to be of an
inquisitive turn of mind. Once suspicion fell upon the unfortunate
man, the department went to work in the full belief that he was
really guilty and would not admit the possibility of any mistake.
In the investigation which followed, there was a disposition in the
department, to introduce every matter which might possibly
prejudice them against Dreyfus, and to shut out every matter
which might prove his innocence or shake their suspicions. This
disinclination was an exaggerated form of the tendency of detective
officers all over the world never to admit that they have been on the
wrong track. But there was a special circumstance in this case, to
account for the endeavours made, to fasten the guilt upon Dreyfus.
There were two persons who were immediately interested in directing
the enquiry into a wrong channel and of whom one had full access
to the records of the Intelligence Department. These persons were
Colonel Henry already mentioned and his friend and accomplice
Major Esterhazy. Colonel Henry had been in the habit of selling
information to the German embassy and his medium in these
nefarious transactions was Esterhazy. The bordereau in respect of
which Dreyfus was suspected had, as a matter of fact, been written
by Esterhazy. And his authorship has been subsequently admitted
by himself. Colonel Henry was therefore interested in averting
suspicion from his accomplice and himself and in fastening it upon
Dreyfus. The actual date of the bordereau was altogether incompa-
tible with the hypothesis of Dreyfus's guilt, as he had known
in May that he was not to attend the manœuvres. The date of the
bordereau was therefore altered to a date in April. M. Du Gobert
having pronounced against the identity of the handwriting, another
expert was found in the person of M. Bertillon to swear to the
identity. Our readers are aware of the dangers of expert testi-
mony and of the caution with which English judges act upon
such testimony. No more signal illustration of the danger of such
testimony can be given than this evidence of the handwriting of
Dreyfus. Upon the flimsy materials we have mentioned Dreyfus
was arrested on the 15th October, 1894, on a charge of treason
and thrown into prison, the jailor being under strict instructions
to deny to Dreyfus the use of all writing materials and to prevent him from seeing or communicating with anybody including the members of his family.

No particulars of the charge were vouchsafed to him, and he was in complete ignorance as to the cause of his arrest and imprisonment. During his detention in jail he was visited by Commandant Du Paty de Clam, and was subjected to frequent inquisitorial examinations, with the object of entrapping him into some admission of guilt. These examinations, however, proved fruitless, as the prisoner would not and could not, confess a crime he had not committed. The jailor informed General Mercier the Minister of War that in his opinion based upon the observation of the prisoner's conduct, he was not the real culprit and that the department had gone off on a false track. Dreyfus was eventually allowed an interview with his counsel, Maitre Demange, and he was ordered to be tried by a Court-Martial consisting of seven officers, on the 19th December, 1894. Three weeks before the date of the trial General Mercier wrote to the Figaro that the guilt of Dreyfus was absolutely certain and that he had the most positive proofs of his treason. The spectacle of responsible officers of the Government writing to the newspapers upon a case which is sub judice and trying to prejudice the minds of the public against the accused is unintelligible and cannot conceivably happen, in any country where the English law is administered. At the instance of the prosecution the trial took place within closed doors. The acte de' accusation alleged that Dreyfus used to work after hours, that it was conceivable, that he might have gained access to the bureaux with improper motives, that his statement to Du Paty de Clam that he might search everywhere, and his surrender of the keys, were clear proof that all compromising documents had been hidden or destroyed, that he persistently denied his guilt and easily got out of the charge owing to the supple character of his mind and that his handwriting was identical with that of the bordereau. Of the experts in handwriting two deposed against him and three declared the identity to be uncertain. The only other important witnesses were Du Paty de Clam who gave a history of the prisoner's life and Colonel Henry. The judges, however, were not free from doubt and when they retired for con-
sultation at the close of the case, a secret _dossier_ was sent to the
President by General Mercier through Du Paty de Clam with instruc-
tions to the judges to read it at the close of the case and return it.
The secret _dossier_ consisted of four documents which have all since
been found to be forgeries. These documents were not proved.
They were not shown to the accused or his counsel and he had no
opportunity of meeting them. One of these documents was
destroyed by General Mercier as soon as it was returned to him and
a copy of it which was discovered in 1897 was immediately burnt.
It was this secret _dossier_ that removed all doubt from the minds
of the judges and they found Dreyfus guilty of treason and
condemned him and sentenced him to degradation and confine-
ment in Devil's Island. Another attempt was made to obtain a confession
from Dreyfus, and he was asked by Du Paty de Clam whether he
had not merely given up documents of no importance for the purpose
of obtaining more valuable ones in exchange. Dreyfus, however,
denied the charge altogether. On the day of his public degra-
dation Dreyfus informed Captain Le Brun-Renaud of his conversation
with Du Paty de Clam. Captain Le Brun-Renaud, however, forgot
a portion of Dreyfus's statement and reported that Dreyfus had said
that if he communicated information to Germany, it was with the
object of securing more valuable information in exchange. No steps
were taken by General Mercier to verify the so-called confession.

In July 1895 Colonel Picquart succeeded Colonel Sandherr
as Chief of the Intelligence department. In March, 1896, Colonel
Picquart received the fragments of a _petit bleu_ or telegram-card
from the charwoman of the German embassy. When the pieces
were put together it was found to be a confidential communi-
cation addressed to M. Esterhazy. In his enquiries about Esterhazy,
Colonel Picquart obtained specimens of Esterhazy's handwriting
and found it to be identical with that of the _bordereau_, an opinion
in which he was fully confirmed by M. Bertillon. Colonel Picquart
pressed his superior officer General Gonse to order the arrest of
Esterhazy, but the latter refused on the ground that he could not
think of going back upon the trial of Dreyfus, that the reputation
of the highest Generals was involved in it, and that the confine-
ment of Dreyfus even if unjust was not a matter to weigh against it in
the balance. In September, 1896, the fact that Dreyfus had been
convicted upon secret evidence illegally communicated at the close of the case was published to the world in the columns of the *Eclair*. In November, 1896, the *Matin* published a facsimile of the bordereau alleged to have been written by Dreyfus. In November, 1896, an interpellation was made as to the possibility of a revision, but General Billot, the Minister of War, declared that the matter was, a chose-jugee or, to use the language of our Courts, a *res judicata*, that it was not possible to go back upon the trial and that justice had been done. Colonel Picquart having been found to own a somewhat troublesome conscience, he was sent to Tunis and Colonel Henry was appointed in his place. Colonel Henry actively began the manufacture of a number of letters and telegrams with the help of one Le Mercier Picard with the object of ruining Picquart, saving Esterhazy, and producing fresh proofs against Dreyfus. On becoming aware of the attempts made to ruin him, Colonel Picquart came to Paris and entrusted his lawyer M. Leblois with copies of the correspondence, between him and General Gonse regarding the authorship of the bordereau: M. Leblois succeeded in persuading M. Scheurer-Kestner the Vice-President of the Senate of the innocence of Dreyfus: M. Scheurer-Kestner applied to the Premier M. Meline, and to the Minister of War General Billot for a revision of the trial, but in vain.

From that time forward M. Scheurer-Kestner devoted himself to the task of establishing the innocence of Dreyfus and it is one of the most pathetic incidents of this painful story that he died without witnessing the fruition of his labours for the release of Dreyfus. In October, 1897, Esterhazy's stock-broker M. de Castro discovered the identity of the writing of the bordereau with the handwriting of his client Esterhazy and communicated his discovery to M. Scheurer-Kestner. On the 15th November, 1897, Dreyfus's brother wrote to the papers accusing Esterhazy of the authorship of the bordereau and challenging the Minister of War to prosecute Esterhazy. Esterhazy and Du Paty de Clam, now forged a number of letters with the object of concocting charges against Colonel Picquart and the theory set up by them was, that Dreyfus and Colonel Picquart had made themselves acquainted with Esterhazy's style of handwriting that Dreyfus had in writing the bordereau simulated the handwriting of Esterhazy
and that Colonel Picquet had forged the *petit bleu*. A judicial enquiry was held into the conduct of Esterhazy and ended in his acquittal. Colonel Picquet, on the other hand, was found guilty of having communicated General Gonse’s letters to his lawyer and dismissed from the army. The scandal of Esterhaxy’s acquittal and Dreyfus’s conviction stirred the indignation of M. Zola who published a scathing attack upon the War Office in the columns of the *Aurolé* charging the first Court-Martial with punishing a man whom they knew to be innocent and the Second Court-Martial with acquitting to the order of the Government a man who was really guilty. The position of M. Zola compelled the Government to take notice of this attack and to order his prosecution for libel, but though M. Zola had denounced in no sparing terms the infamy of the Dreyfus’s trial behind closed doors and with secret testimony, and though M. Zola and his Counsel urged the Court that the whole article should be made the subject of prosecution, it was confined to the single passage in which he charged the Esterhazy Court-Martial with having acquitted to order. The Zola trial is an excellent illustration of the peculiarities of French Criminal Procedure. The opening speech of the Counsel for the prosecution was immediately followed by the opening speech for the defence. The Counsel for the accused is allowed the privilege of having the last word after the prosecutor’s reply. Questions are not put to the witnesses directly, but are addressed to the judge and he is asked to put the question to the witness. Witnesses were allowed to speak, not merely to facts within their knowledge but to matters of hearsay and to express opinions and make speeches to the jurors. Witnesses are not examined consecutively for the prosecution or for the defence, but without any order and very often while the examination of a witness is going on, a number of other witnesses are examined to contradict the unfinished testimony of the witness already under examination. The evidence of the witnesses and the speeches of Counsel are punctuated with hisses and cheers, and the remarks of approval or disapproval of the audience. During the examination of General Mercier he volunteered the statement “I say upon my word as a soldier that Dreyfus was a traitor who was legally and justly condemned.” He was also allowed to make a long speech to the jury in support of the conviction of Dreyfus. Another witness General De Pellicieux said in reference to the
Esterhazy Court-Martial "It was made up of seven brave officers who had shed their blood on the fields of battle while others (looking at Zola) were—I know not where." General Pellieux produced a despatch forged by Le Mercier Picard at the instance of Colonel Henry but purporting to proceed from Colonel Panizzardi, the Italian Military attaché and stating that he was resolved to deny his relations with Dreyfus. The Court refused to allow Zola's Counsel to cross-examine upon this document. General De Pellieux appealed to the jury to save their sons in the army from the butchery which would follow, if the prestige of the Generals was impaired. General De Boisdeffre threatened the retirement of the chiefs of the army, if Zola was acquitted.

On behalf of Zola several distinguished men of letters were produced who declared their belief in the bona fides of Zola in his letter to President Faure. The speeches of Counsel on both sides travelled beyond the record and referred to matters about which there was no evidence in the case. Zola's Counsel was allowed in his speech to read long extracts from the newspapers in favour of Dreyfus and his family. Though the presiding judge had ruled that the prosecution had nothing to do with the Dreyfus conviction, the witnesses for the prosecution and Counsel on both sides were permitted to refer to the trial in their speeches. The jury returned a verdict of guilty and after the procedure we have detailed, it would have been surprising, if they had returned a different verdict. Zola was sentenced to one year's imprisonment and a fine of 3,000 francs but on appeal to the Court of Cassation the verdict was quashed on a technical ground and a re-trial was ordered. M. Zola allowed judgment to go by default, and left for England and the Zola episode thus came to an end.

In July 1898 M. Cavaignac, the Minister of War, produced before the Chamber of Deputies the forged despatch written by Picard and stated that Dreyfus had confessed his guilt. Colonel Picquart wrote to the papers denouncing the despatch as a forgery and the German and Italian Governments informed the Minister of War that the despatch was a forgery by Picard under the orders of Colonel Henry. Colonel Henry was then interrogated by the Minister of War and finally confessed that he had committed the forgery under orders for the good of the army and that what we
had done he would do again for the good of the country and of the army. Colonel Henry was then arrested and put in prison, but he was found dead the next morning with his throat cut. Esterhazy left for England with Du Paty de Clam and confessed his authorship of the bordereau. A change of ministry followed and M. Brisson the new Prime Minister sent up the case to the Court of Cassation which came to the conclusion that the bordereau was written by Esterhazy and that this fact rendered a re-trial of Dreyfus necessary. Dreyfus was accordingly brought from Devil's Island and the re-trial commenced on the 6th of August last before a Court-Martial of seven officers at Rennes. Several ex-Ministers of War and several Generals came forward as witnesses for the prosecution and deposed to their belief in the guilt of Dreyfus. The evidence adduced in the case consisted of the opinions of experts in handwriting, expressions of belief on the part of the witnesses as to the guilt of Dreyfus and many other matters of hearsay which will not be received in any English Court of Justice. Evidence was also adduced to show that Dreyfus had led a loose life before his marriage and it was sought to be inferred therefrom that he was likely to have committed the offence charged against him. On the principles which guided the Court, it would have been possible to convict most persons of any conceivable offence. Letters sent to Court by persons who did not appear before the Court as witnesses were used as evidence without any attempt to call the writers or prove the contents. We have already referred to the peculiar method of cross-examination in French tribunals in which counsel are not allowed to put the question direct to the witness, but are obliged to put it through the Court. The verdict of the Court pronounced by a majority of five against two was as extraordinary as the procedure adopted. Dreyfus was pronounced guilty but under extenuating circumstances. If Dreyfus was guilty at all, there could be no palliation of the offence. The Court of Cassation having found that the bordereau was written by Esterhazy and not by Captain Dreyfus, it is difficult to conceive how any Court should have honestly come to the conclusion that Dreyfus sold to the German Government the Military secrets mentioned in the bordereau. The pardon granted by President Loubet can hardly be deemed to be an act of justice to Dreyfus. Though he has obtained his personal freedom, the stigma of a conviction still remains. He
was entitled to an acquittal and ought to have been acquitted. It is strange that a civilized country like France should possess a criminal procedure so ill adapted to the ascertainment of truth and the ends of justice. Miscarriages of justice and high-handed acts of oppression are no doubt likely to occur in all countries; and in India, we have recently had a flagrant instance of such an abuse of power in the case of the Natu brothers. While in some respects the case of the Natu brothers is far worse, and far more pitiable than that of Dreyfus, for while Dreyfus has had the satisfaction of at least knowing the charge against him and of having had a public trial, however ill-conducted, the Natu brothers have been kept in confinement without even the semblance of a trial and without any intimation to them of what they were accused of. While Englishmen have expressed their indignation at the iniquity of the treatment accorded to Dreyfus, they have been altogether oblivious of the fact that similar or even worse treatment has been accorded in India to the Natu brothers. It must be said, however, to the credit of the English Government that though it may commit people to confinement under antiquated Regulations for so-called political reasons, such cases are rare and that in all criminal trials the procedure adopted is far more favourable to the prisoner and far better calculated to serve the ends of truth and justice. If there is one thing for which we have to be grateful to the English Government more than for any other, it is for the administration of the English rules of evidence and the English rules of Procedure in our Courts.

SUCCESSION TO IMPARTIBLE ESTATE.

SENIORITY AND HALF BLOOD.

It was decided by the High Court of Madras that in the case of an impartible Zemindary the brother of the half blood is by reason of seniority of age entitled to the succession in preference to the brother of the full blood but junior in age, vide Ramasami Kamaya Naik v. Sundara Lingasami Kamaya Naik, I. L. R., 17 M., 422. The family consisting of three brothers was governed by the law of Mitakshara, and its status was that of an undivided and not that of a divided Hindu family and the impartible Zemindary was not the self-acquired or the separate property of the deceased. If