As the Supreme Court is of all tribunals known to men the greatest, so is it, according to a natural law, subjected to a more searching and jealous criticism than any other.

Ever since its organization the questionings of lawyers and laymen alike have followed, and sometimes challenged, its judgments, and about its seat of power has rested the light of eager and interested scrutiny.

Upon no other court has been imposed the duty of resolving controversies of equal moment; and easily distinguished of these, for importance and breadth of interest, are such as involve construction of the Federal constitution, and touch more or less directly the tenets and policies of political parties, as reflected from time to time by acts of the Congress.

In no country — and least of all in one so broad as ours in territory, inhabited by a people derived from many races and holding dissimilar traditions of law, society, and government, with interests and pursuits so numerous, diversified, and complex — could it be that any body of men, chosen by methods howsoever perfect and of personal and professional character howsoever unreproachless, should discharge, scathless, the august functions pertaining to that court.

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1 Annual address delivered before the Texas Bar Association, Thursday, July 27, 1899, by F. Charles Hume, of the Galveston Bar. The Association adopted unanimously a resolution requesting the publication of this address in full in this Review.
the waters of Lakes Superior, Michigan, Huron, and Erie, are hurled downward from the precipice. The great river seems to be busy, busy, busy, working at some great purpose. It seems to have thought and intelligence. One who looks at it can hardly realize that the volume of water which plunges from the precipice at a given hour, may be decreased or diminished threefold or more by the direction of the wind on Lake Erie.

This excursion wound up by an enjoyable supper at the Cataract House. Other features of this meeting of the American Bar Association will be separately spoken of elsewhere.

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More about the Dreyfus Case. — We have not troubled our readers about the Dreyfus case for some time, knowing that they have tried to keep pace with it in the daily papers. No legal proceeding which has taken place in modern times has afforded a spectacle at once so appalling and so ludicrous. The struggle for what is called "Revision" in the French law, described in a former number by our contributor, Mr. Ameisen, resulted in the institution of a proceeding for a revision of the trial by court-martial under which Captain Dreyfus was sentenced to penal servitude on the Ile du Diable. This proceeding commenced in the regular course of French justice, as it seems, before the criminal section of the Court of Cassation. This court, as we have seen its constitution explained in the public prints, is a very numerous body, consisting of three divisions, each composed of fifteen judges, and each having its own president; so that the whole court, when assembled en banc, as we would say, consists of no less than forty-eight judges. The court proceeded with the investigation in a public and decent manner, according to the course of its procedure, so far as appears.

In the course of the proceeding it became necessary to bring before it as a witness, Lieutenant-Colonel Picquart, who had been a member of the French High Staff, and chief of its Intelligence Bureau. It is well remembered that he was incarcerated in a military prison upon some charge — forgery we believe — because, having the means of forming an opinion upon the question, he had announced that opinion to be that Dreyfus was innocent of the charge of communicating military secrets to a foreign government, upon which charge he had been tried and convicted. It is said that the President of the Court, observing the fatigue of Col. Picquart, doubtless the result of his imprisonment and the excitement under which he labored in giving his
testimony, offered him an extra glass of rum — one glass more than it is the custom of the court to give a witness to enable him to refresh his memory. The president also committed the grave offense of addressing Col. Picquet (who had not yet been convicted, but was merely accused), by his military title. We say "grave offense," for such it seems to have been in the country under whose laws an accused person is in fact if not in theory presumed to be guilty until he has proved himself to be innocent. For these two breaches of decorum, one member of the court, M. De Beaurepaire, resigned his high office, and then made demands upon the government that it do this and that, and made a spectacle of himself in the public press.

It now became apparent that the criminal division of the Court of Cassation would order a new trial of the charges against Captain Dreyfus, but it was also apparent that the government had at every step to reckon with the army and the generals, many of whom were themselves on the defensive, and some of whom were probably among the real traitors. In order that the hands of the government might be strong in this combat, it became apparent that it would be necessary to have the order of revision pronounced by the entire Court of Cassation, and not merely by the criminal section of it. The court was accordingly "doctored," so to speak, by the passage of a law transferring the proceeding for revision to the whole court. The interference of the legislature with a proceeding pending before a court of justice would in this country excite universal reprobation, — though this has taken place in one or two conspicuous instances, notably in an act of Congress withdrawing from the Supreme Court of the United States the power to issue writs of habeas corpus when it had before it a proceeding of that nature, which had been brought to test the constitutionality of the so-called "Reconstruction Act," following the Civil War. American journalism did not hesitate to denounce the passage of this French law, as an attempt to reconstruct the court so as to secure a decision against the granting of another trial. Nevertheless, the result was that a new trial by court-martial was ordered by the unanimous judgment of the court.

This new trial was directed to take place at Rennes, in the west of France. Dreyfus was brought from his imprisonment on the malarial, tropical Ile du Diable, and when he staggered upon the soil of France, it appeared that he had been denied all knowledge whatever of the agitation that had followed his sentence and imprisonment, and of the causes which led to his restoration to the soil of his country. He had merely been allowed access to such bits of alleged news as that his wife had been unfaithful to him, etc. The trial began before a court-
martial composed of seven officers, the one of highest rank being a
colonel named Jouaust. One remarkable feature of the case—
remarkable at least to Americans—was that the court began its ses-
sions every morning at six o'clock, which we understand to be about
the hour at which in France condemned prisoners are taken out for
execution. The prisoner was, of course, allowed counsel, and was
defended by two able advocates, Maitres Demange and Labori. The
younger of these, M. Labori, appears to have been far the abler in
cross-examination, far readier in resources, and far more aggressive
than his senior. The prosecution was represented by Major Carriere,
a military officer, whose functions corresponded to that of a Judge-
Advocate in an American court-martial. He seems to have been on
the whole a well-meaning man, and would doubtless have acted fairly
on most points, had he not been bullied by other officers of the army,
including the president of the court.

A characteristic incident of the trial was that, one morning, while
Maitre Labori was going to court, he was fired at from an ambuscade
and shot in the back, near the spine. We can only conjecture the exact
nature of his wound, for the press correspondents sent out various con-
flicting statements concerning it, one of these being that the bullet had
lodged against a portion of the spinal vertebrae. This wound rendered
it impossible for him to appear in court. Under the circumstances,
the most obvious thing which an American court would have done would
have been to adjourn the trial so long as there was any reasonable pro-
pect of his recovery within an early period. Maitre Demange made a
motion of this kind, but it was resisted by Major Carriere and refused
by the court. The American Bar Association sent a message of sympa-
thy to M. Labori, but refrained from expressing any opinion as to
the guilt or innocence of the accused. The trial, if it could be called a
trial, then went on with the defendant handicapped by the absence of
the abler of his counsel. We were about to say "lawyer;" but that
word would have been inappropriate; since there can be no lawyers in
a country where there is no law.

In the French law there are no rules of evidence. When the Code
Napoleon was framed, and they came to the title of evidence, it per-
plexed them so much that they concluded to leave everything to the
discretion of the judge; and so the whole matter of admitting and
excluding evidence rested in the mere discretion of the court-martial,
composed of men unlearned in the laws of procedure and who had the
strongest motive to vindicate the army by convicting an innocent man,
a thing which they had been advised to do by leading French public
men, notably by the swashbuckler and duelist, Cassagnac. The result
was that the discretion of the court was exercised to let in everything except evidence which might work decisively in favor of the accused. Witnesses went upon the stand and made long speeches vindicating themselves. Hearsay evidence was the rule, and real evidence was the exception. Nearly every witness made an argument and gave his opinion either that Dreyfus was guilty or that he was innocent. Not one per cent of all the evidence that was heard would be admissible in an English or an American court. The French intellect seems to have been utterly incapable of devising modes of trial or rules of evidence capable of ascertaining, with any tolerable degree of accuracy, the real question of guilt or innocence. At the outset, the prisoner, as soon as he is officially accused, is, in fact if not in theory, presumed to be guilty. He is examined in his cell by an inquisitorial process, and every word or indication of emotion is noted. At the outset of his trial, he is compelled to stand up and submit to an interrogatoire, which consists of a series of questions put to him by the president of the court from the document thus made up, called a protocol, prepared in advance by the lean dogs of the law, namely, by the police and the law officers of the government. This interrogatoire takes him at his birth and carries him down to the date of the commission of the crime charged against him. All sorts of irrelevancies are dragged into it. All sorts of questions, having no relation whatever to the real question of his guilt or innocence of the crime charged, are put to him, and especially those the answers to which might tend to blacken his character and render him offensive to the triers of the facts. After he has been put through this process, the so-called testimony commences. This, as we have already indicated, is anything and everything which any witness may choose to rehearse, the great mass of it being mere hearsay. All sorts of irrelevant documents, and especially letters written by third persons, all of them in the nature of hearsay evidence, are introduced. Witnesses make long arguments on the witness stand which take either the character of a defense of themselves, or of arguments in favor of or against the prisoner. While witnesses are giving their testimony, they are subject to interruption by other witnesses who have given opposing testimony. These interruptions sometimes involve colloquia of the characteristic French kind between three or four different persons at the same time,—all hurling back and forth their opposing arguments and contradictions, yelling and quivering with excitement, tearing the air with their arms, and shrugging their shoulders to indicate dissent.

One rule of procedure, which seems slightly to favor the prisoner, is this, that whenever a witness has testified against him, at the close
of the witness' testimony, the prisoner is allowed to make his little speech commenting upon it, or criticising it, or denying it.

A striking illustration of the kind of evidence upon which the fate of the wretched prisoner hung, is found in the fact that, toward the close of the trial, the prosecution trotted out, with but twenty-four hours' warning, an unspeakable rascal and lunatic named Cernuschi, a Servian refugee, — that is to say, a fellow that had been run out of Servia with that unspeakable abomination, King Milan, and had taken refuge in France. This fellow had been under the surveillance of the French police, and they had an odious character registered against him. Nevertheless, he was thought a fit person to vindicate the honor of the French army. His testimony is said to have been of the greatest importance to the prosecution, and a great blow to the prisoner. Now, what was that testimony? It was to the effect that, some years before, the witness, in a café, had heard the Austrian military attaché say that Dreyfus was the real traitor. The evidence, it will be perceived, was purely hearsay, and, what was more, no circumstances of time or place were given sufficient to enable the counsel for the accused, in the short time which remained to them, to run the lie down and nail it. This fellow was immediately trotted out of France, and one or two days afterwards the counsel for the prisoner was allowed to make the statement that he was insane in Switzerland, and had broken down and contradicted the whole story which he gave before the court.

Nevertheless, this story — testimony which an American justice of the peace would never think of admitting or listening to, — was deemed of such great importance by the counsel for the prisoner, that they appealed to the German and the Italian governments to come forward and disclose the truth in the interests of justice, by sending, as witnesses to the court, the officers who had been respectively their military attachés at the time of the doing of the acts for which Dreyfus had been convicted. These officers were, on the part of Germany, Colonel Schwartzkoppen, and on the part of Italy, Major Panizzardi. These governments replied to the effect that the officers would not be sent, but that their depositions would be given if required Maitre Labori then appealed to the court for a commission to take their depositions, and stated the interrogatories which he desired them to answer. These interrogatories were few and simple. They may be indicated by those which he desired to have put to Colonel Schwartzkoppen. These were:

On what date did you receive the bordercaud and the documents named therein? Was it in the same handwriting as the one in possession of the court? Did you receive the firing manual and the firing rules? How long had you been
in relation with the sender? Did you send the petit bleu to Esterhazy? Have you ever had direct or indirect relations with the accused?

The representative of the French Foreign office, M. Paleologue, stated that this was the usual course, and that the foreign office was not opposed to it. Major Carriere, the government prosecutor, said that he had no objection, provided the law forbidding an adjournment of more than forty-eight hours was respected. Nevertheless, the court returned with the announcement that the court had no jurisdiction to grant the application, but that the decision rested with the president of the court alone. Colonel Jouaust then announced that, as president of the court, he felt compelled to refuse to exercise his discretionary power in compliance with the request of the prisoner. M. Labori, quite aghast, demanded to know if the president of the court refused a commission to take the testimony of the two witnesses referred to. Colonel Jouaust replied: "I maintain this decision." After this appalling and outrageous decision, some more characteristic French evidence was heard. A part of this consisted in the reading of a great many letters of the scoundrel Esterhazy, as though the unsworn statement of a fellow that had contradicted himself with regard to this affair in so many particulars, and that had sold his lies, pro and con, to any editor that would buy them, could have any weight in a court of justice.

The evidence then closed; and Major Carriere, evidently half convinced of the innocence of the accused, began a weak and rambling address to the court. Maitre Demange followed, in a speech which is described by the press correspondents as a great speech. The opening portion of it, which recited letters which passed between Captain Dreyfus and his wife during the years of his imprisonment on Ile du Diable, is said to have been very affecting, and to have moved even some members of the court to tears. Maitre Demange concluded his speech on Saturday, September 9th, and the court immediately retired for deliberation. After being out a little over an hour they returned and announced a finding of guilty, with a sentence of ten years imprisonment in a military fortress. The prejudice and brutal injustice of the court had become so manifest that the verdict was expected by almost every one, including the counsel for the prisoner. Before the trial closed, and after Col. Jouaust had announced his refusal of a commission to take the depositions of the former military attachés of Germany and Italy, the German government made a semi-official announcement that Dreyfus had had no relations with that government. This, of course, was not evidence; though, in France, where there are no rules of evidence, it is plain that it might have been ad-
mitted and considered by the court, if it had worked against the prisoner, instead of in his favor.

Recapitulating this long drawn out and shameful business, in which the French army, and incidentally the French Republic, and not merely a miserable Jewish captain of artillery has been on trial, it may be said that the arrest of Captain Dreyfus took place on October 15, 1894; that, on December 22, of the same year, he was condemned to be degraded from the army, and to suffer a lifelong imprisonment, upon secret documents which neither he nor his counsel were permitted to see, one of which was certainly forged. That on January 4, 1895, he was publicly degraded before l’École Militaire, the insignia of his rank, even the buttons, cut from his uniform and his sword broken. For two years the mantle of silence seems to have covered this shameful injustice, the victim eating his heart out in his place of imprisonment, on a malarial island under a tropical sun. Finally, the question of the rightfulness of this sentence was raised by M. Castelin, in the Chamber, and in the meantime Col. Picquart, filling the office of Chief of the Intelligence Bureau of the High Staff, pursued a course of investigation into the documents on which Dreyfus had been condemned, as they remained in the War Office. To stop this investigation, Picquart was ordered to service in Africa by his military superiors. In July, 1897, evidences of public doubt and dissatisfaction accumulated, and finally M. Scheurer-Kestner announced in the French Assembly that he was convinced of the innocence of Dreyfus. On November 16, 1897, M. Mathieu Dreyfus, brother of the prisoner, publicly accused Esterhazy of being the author of the bordereau. This word, it may be premised, means a detailed memorandum; and the particular document is said to have consisted of a detailed account of the different railways which the different regiments of the French army should take in the case of a certain mobilization. On November 28, 1897, the Figaro published Esterhazy’s letters to Mme. de Boulancy, showing a similarity in his handwriting with that of the bordereau. On December 4, 1897, an interpellation in the Chamber having been made, General Billot, Minister of War, declared “on his soul and conscience” — such soul and conscience as he had — that Dreyfus had been justly and legally condemned. On January 11, 1898, Esterhazy, the real traitor, or one of them, was whitewashed by a court-martial. This unspeakable rascal, since his flight from France, has admitted that he was the author of the bordereau. Two days later, M. Zola, the celebrated littérateur, published his famous letter addressed to the President of the Republic, commencing with the words, “J’accuse.” On the same day, Col. Picquart was arrested. On February 18, 1898, M. Zola was tried for a
libel, based upon the writing of this letter. At this trial Col. Picquart appeared as a witness, and vindicated his belief in the innocence of Dreyfus. Zola was nevertheless sentenced, on February 23rd, to pay a fine of 3,000 francs, and to undergo a year’s imprisonment. He appealed against this sentence, and it was affirmed on August 30, by a court sitting at Versailles. He left France to avoid the imprisonment. His furniture was seized and put up for sale to pay the fine, and his friends bid several pieces in at several times their value. On January 14, 1898, the Dreyfus agitation resulted in the fall of the cabinet presided over by M. Meline, and the cabinet headed by M. Brisson was formed, with M. Cavaignac as Minister of War. Cavaignac was a civilian and an honest man; he came of distinguished family. His father had been a candidate for the presidency of the republic in 1848, against the celebrated Lamartine, who was elected. He believed in the guilt of Dreyfus, and announced that belief in the Assembly, on the faith of a document found in the so-called secret dossier, the word dossier meaning a bundle of papers. In order to satisfy the French nation of the guilt of Dreyfus, this document was photographed and the photographs were placarded all over France. On July 9th, 1898, Col. Picquart wrote to M. Brisson, chief of the cabinet, offering to prove that the document was a forgery. Such investigations followed that on August 30, Lieutenant-Colonel Henry, of the French High Staff, was arrested for the forgery. He confessed his guilt, but claimed that he had done it under the command of his military superiors. There was nothing to do but to send him in arrest to a military prison, where he committed suicide by cutting his throat with a razor, or else his throat was cut by some one else — you can take your choice as to theories. This forgery was committed after the conviction of Captain Dreyfus, in order to have a document lodged in the military archives which would justify his conviction and screen the real traitors — perhaps generals high in rank. We have here the amazing spectacle of a government committing forgery! The astounding declaration made by Col. Henry overwhelmed M. Cavaignac with such chagrin that, on September 3, he resigned the office of Minister of War. Two or three days before that, General de Boisdeffre had for the same reason resigned the office of chief of the High Staff. In fact, the High Staff had become so rotten, and its rottenness had been so raked over and exposed, that it seems that no honorable man could remain a member of it, — at least without holding his nose all the time. On September 5, 1898, the wife of Captain Dreyfus wrote to the Minister of Justice, appealing for a revision under his sentence, in conformity with French law. On the following day, General Zurlinden was appointed
Minister of War. On September 17, the cabinet decided in favor of the principle of a revision of the sentence. On September 18, in consequence of this decision, General Zurlinden resigned his portfolio. On September 26, the question of revision was referred to the criminal division of the Court of Cassation. On October 25, General Chanoine, who had been appointed Minister of War to succeed General Zurlinden, gave up his portfolio in the presence of the Chamber, and this led to the fall of the Brisson cabinet. Thereupon, October 31, a cabinet was formed under the leadership of M. Dupuy, with M. de Freycinet as Minister of War. In the meantime it became apparent that the criminal chamber of the Court of Cassation would order a revision. For reasons which lie in doubt and dispute, whether to checkmate this, or, in case of a revision to secure the weight of the entire court to that conclusion, on February 10, 1899, a law was passed extending the investigation to the entire court. On May 6, 1899, M. de Freycinet resigned his position as Minister of War, and was succeeded by M. Krantz. On June 3, the Court of Cassation pronounced unanimously in favor of the revision, the new trial to take place before a court-martial to be assembled at Rennes. On June 6, Captain Dreyfus left Guiana for France. On June 12, the Dupuy cabinet collapsed. On June 22d, the present Waldeck-Rousseau cabinet was formed, with General de Gallifet as Minister of War. On August 10, the second court-martial began its sittings. These sittings were public, with the exception of those which were necessary for the examination of the secret dossier. On September 9, the sentence of the court was announced, as elsewhere stated.

The whole spectacle is saddening and depressing to the friends of France. It involves the fact of members of her High Staff dishonoring themselves by committing forgeries, and committing suicide, or becoming fugitives from the country, when detected. It involves the fact of the government itself committing forgeries, for there can be no distinction between the fact of a government committing forgery and its Minister of War ordering forgery to be committed. It involves the spectacle of numerous generals of a nation once supposed to be chivalric, trying to make a scapegoat of a subaltern officer, merely because he being a Jew, it is easier for that reason to make a scapegoat of him, than of any one else. It involves the spectacle of these very generals being on trial, rather than the accused. Behind it all rests the undoubted fact if the German government were to show its hand by publishing photographs of the documents which it holds in its military archives, which have been received from France, that publication would destroy
all conception of the honor of the French High Staff, both in and out of France, and would exhibit among the traitors officers of much higher rank than that of captain, or even of lieutenant-colonel. But the most appalling spectacle of all is that of a modern civilized State incapable of justice; and a nation incapable of justice is not fit to live. In securing a revision of the former sentence, the civilians, lawyers, and judges, assisted by some of the soldiers of France, rescued their country from this appalling imputation. Will it be so again? Or will this infamous sentence be permitted to stand?

P. S. The finale is that an innocent man has been pardoned of a crime committed by some one else.

How the Dreyfus Trial Looks to an American Lawyer. — An American lawyer, just returned from Europe, writes to us: "I saw as much as possible of the German and French legal systems, but nothing that compared with the Dreyfus trial at Rennes, at which the mode of taking evidence, as well as the conduct of both court and counsel, amazed me. I came away with the conviction that the accused, before a French court-martial, has even less show than the defendant in a justice of the peace case before the Devoy law went into effect." The so-called "Devoy law" was a statute of Missouri, intended to be applicable in St. Louis, which abolished the system under which justices of the peace were paid by fees, and made them salaried officers. Under the old system every justice was bidding with lawyers for their business, and was always finding for the plaintiff, in order that the plaintiff's lawyer would bring more business. To this an exception existed in the case where the defending lawyer happened to be a patron of the justice, bringing to him a large amount of lucrative business. We even heard it stated, in regard to one justice, that he would watch the struggle between the lawyers and their clients carefully, to see which was the more earnest of the two parties, and then he would decide against that party, knowing that he would be more apt to appeal, and that then the justice would get an additional fifty cents for making out the appeal bond.