CHAPTER IV [PART I]

TRIAL PROCEDURE UNDER THE FRENCH SYSTEM

French criminal procedure as enforced in Pondicherry was a blend of the inquisitorial procedure of the ancient regime and the English accusatorial system introduced by the Revolution. Its development from these two sources made it vital in achieving effective repression of crimes and at the same time protection of the individual.

The basic principle underlying French criminal procedure was that all the facts concerning both the offence and the offender was placed before the court so that it might judge the person's guilt so accused. This aim was achieved by making detailed pre-trial inquiries; by examining the personality of the accused; and by placing the onus of eliciting the evidence at the trial on the judge rather than on the parties to the case.

Great emphasis was laid on the pre-trial inquiries which allowed an investigation into anything that might have a bearing on the case. In serious cases, these inquiries were made by an independent 'magistrate' known as the juge d'instruction. The accused might also
be examined together with any evidence in his favour or witnesses he wishes to call\(^1\), and while he cannot be compelled to answer any question or reveal his defence, it was in the obvious interest of an innocent person to allow the facts in his favour to be fully investigated. Any unjustifiable attempt by an accused to reserve his defence until the trial while finding out the strength of the case against him in advance, was liable to be looked on with suspicion. It was claimed that an exhaustive investigation into the evidence before the trial not only ensures that all facts both against the accused and in his favour are made known, but also lessens the risk of an innocent person being sent to trial. A court of law, restricted to trial proceedings was by necessity more restricted in the scope of the inquiries. By making the facts the subject of prior investigation, the issues between the parties are clearly identified, and there was less risk of one party manipulating the evidence by producing new evidence at the trial, thus placing his opponent either without an opportunity to reply, or to produce existing contradictory evidence. The inquiries, while thorough, in no way prejudged the case. While the attempt was made to resolve any conflict in the evidence, or at least ascertain where the difference lies, the trial court alone had the right to interpret the evidence and decide on issues

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1. This does not mean that the rights given to the defence were not jealously safeguarded.
of credibility. Pre-trial inquiries were made in private, and it was only at the trial that the evidence was examined in public and made the subject of comment. The inquiries merely established whether or not there was sufficient evidence, which if believed, would constitute a case for the accused to answer, and if there be such a case, that was sent for trial before the appropriate court. To that extent only, they resemble English committal proceedings. It can, of course, be argued, that committal for the trial only after detailed inquiries will produce a presumption of the accused's guilt. The answer usually given to this argument is that the pre-trial inquiries do not seek to pre-judge the case, being solely designed to ensure that the full facts of the case were made available to the trial court which alone had the right to interpret and assess the evidence and thus decide on the question of guilt or innocence.

The purpose of a French criminal trial is to judge the accused - 'on jude l'homme pas les faits'. Hence the court does not concentrate on the evidence, leaving it to the accused to take the initiative in regard

2. With regard to the effect on a jury, the vast majority of cases were taken in the tribunal correctional where there was no jury. The acquittal rate in the tribunal correctional was in the region of 5%, but some of these were due to legal reasons.
to this defence. The accused was examined in relation to the dossier and it was the accused who was on trial rather than an objective assessment as to whether or not the prosecution has proved its case against him. It was therefore considered essential to have a proper understanding of the accused in order to interpret his actions, judge his credibility and if convicted, determine his degree of guilt when deciding on sentence (which is considered as an integral part of a guilty verdict). Although penalties were fixed with certain limits, the French attitude was that the punishment should fit the criminal, not the crime. All the facts concerning the background and personal life history of the accused (including any previous convictions) were made known to the court before it reaches its judgement. Bad character should not however be considered as a factor when deciding on the issue of guilt. In cases where the pre-trial inquiry had been conducted by a juge d'instruction, especially if the offence is a 'crime' the accused's background was fully investigated, otherwise such information was provided by the police and by the accused himself.

The results of the pre-trial inquiries-both into the facts and into the personality of the accused-here compiled into a 'dossier'. It was

3. Unfortunately a rising crime rate often gives rise to exemplary sentences in the hope of deterring others.
essential that all parties to the case be kept informed of the progress of the inquiries, therefore all parties had access to the 'dossier' to study the contents thereof. This was an additional reason why the accused must be examined before the trial, for otherwise the 'dossier' would provide an unbalanced version of the evidence, containing only the prosecution case. Moreover, an unscrupulous accused, if not subject to prior examination and having learned the full details of the case against him, could wait until the trial or produce false evidence consistent both with the prosecution case and his innocence, such evidence not having been subjected to the same pre-trial scrutiny and verification.

The 'dossier' was given to the president of the court prior to the trial, and while the evidence at the trial was not restricted to the facts contained in the 'dossier', if the pre-trial inquiries were properly made, the evidence will more or less follow the 'dossier'. The duty of eliciting the evidence at the trial was given to the judge, rather than leaving the presentation of the evidence in the hands of parties who have an interest in the outcome of the case. The judge thus played a predominant role in French criminal trials, examining the accused and

4. At the cour d'assises, the jury does not have access to the 'dossier', and can only rely on the evidence presented orally in the court.
the witnesses (although the parties may suggest questions) and taking all other steps which he deemed necessary to find the truth. To prevent any evidence being withheld from the court by virtue of some legal provision, virtually no evidence other than hearsay was excluded as inadmissible on the grounds of incompetency or irrelevancy.

By these means, French criminal procedure attempted to ensure that the 'the truth, the whole truth and nothing but the truth' was sought and ascertained before and during the trial by means of detailed impartial inquiries. Hence the system was described as inquisitorial, rather than accusatorial where it is left to the prosecution to accuse an individual, producing evidence to justify its accusation, while the individual has the sole responsibility of deciding how to answer the charge. French lawyers tend to criticise the accusatorial system in that it leaves the pre-trial investigations, and more important, the presentation of the case in court in the hands of one of the parties of the case. This leaves the way open to suppression of the evidence by one of the parties (either because certain evidence is unfavourable to his case, or does not seem worthwhile-pursuing) and to manipulation of the evidence and distortion of the truth by the way in which it is presented in court. To overcome this difficulty complete intellectual
honesty was required from both the persecution and the defence, which was difficult to obtain in view of their opposing roles. Under French system the judge was regarded as impartial, as he advocated neither the prosecution nor the defence view.

In the French system of criminal procedure an accused person cannot 'plead guilty' at the trial court. Hence, all the court appearance take the forms of trials. As there was no occasion prior to the trial when the accused may be brought before the court to state his response to the charge against him, the trial time was the only time when the court might consider any objection by the accused to the competency or relevancy of the proceedings or any other plea in bar of trial.

COMPETENCY TO TRY AND OBJECTIONS TO THE PROCEEDINGS

An objection might be taken on the grounds that the court is not competent to try the offence in that it has no jurisdiction so to do. The power of the court was bound by territorial limits, for the tribunal correctional either the offence must have been committed within the geographic area over which the court has jurisdiction, or one of the accused must normally be domiciled in that area, or one of the accused must have been arrested there. The court was further limited to deal
with a specific type of offence, for example, the tribunal de police not
dealt with a 'delit'. Objections were also be taken if the proceedings
were not commenced within the time limits determined by statute-
namely ten years for 'crimes', three years for 'delits' and one year for
'contraventions'. A criminal court not decided a question of legal status
(legitimacy, marriage, nationality, etc.) if this was involved in a criminal
charge, and must await until the appropriate civil court has decided
such issues.

A criminal proceedings might not be instituted against an
accused who was insane, whether such insanity occurred at the time of
the offence, or at the time of the trial. Another plea which would
successfully bar criminal proceedings was 'res judicata'. If a criminal
court had already decided on the same matter-i.e. the same accused,
offence, etc. - subsequent criminal proceedings might not be based
thereon. Thus an accused acquitted of murder, could not be re-tired for
the same offence under the 'nomen juris' of culpable homicide. As a
general rule only the verdict of a criminal court would act as 'res
judicata'. The decision by the procureur not to prosecute was regarded
as an administrative decision and not the verdict of a court. The
decision of a juge d'instruction might in some cases act as 'res judicata'.
THE GLIMPSES OF FRENCH TRIAL PROCEDURE

In some special matters, like traffic or excise, departmental officers were empowered to record offences in the nature of misdemeanour detected by them. Such officers took oath before the court before assuming charge. The record so prepared was believed by the court till the contrary was proved. The accused person who was given a copy of the record has to exculpate himself by adducing evidence which could be rebutted by the officer concerned. Vary rarely those records were challenged. The accused person pleaded quietly or some exception. If he challenges the content of the record and proves it to be false, the recording officer becomes immediately liable to criminal prosecution.

In ordinary matters the court was seized by a committal order when the investigation process had been gone through or by direct summons by the prosecutor or the civil party. As far as the trial was concerned, there was of course some difference according to the category of offences. But the common essential features were as follows; The charge was read out to the accused and his reply obtained. If he pleaded guilty the court might accept the plea of guilty. Otherwise, the evidence of the civil party, if any, was produced and then that of the prosecutor. Any person could be a witness except the
informant when the law allowed a reward. Similarly, the civil party and the co-accused could not be competent witnesses, if there is no objection by the accused or the public prosecutor. The witnesses were examined by the court. They were confronted with the accused and also with one another in respect of the variations in their depositions. Questions might be put by the accused or his Counsel, the prosecutor and the civil party to the witnesses through the court. Similarly, questions might be put to the accused by the prosecutor and also the civil party through the court. The accused was then examined by the court. At that stage he could produce his evidence, if any.

The civil party then presented his arguments. The public prosecutors pronounced his indictment and proposed to the court the punishment to be imposed. The counsel for the accused presented his arguments and the accused was heard in person.

A memorandum of the substance of the depositions and confrontations were prepared by an officer of the court. The judges were thus totally free in their endeavour to discover the truth.

The prosecutor had the duty to prove all the ingredients of the offence and the absence of the exceptions raised by the accused.
Similarly, the latter had to prove his plea, if any. Neither the prosecution nor the accused needed to prove his case. The court could not base its finding on the absence of proof by them and rest content with saying that they have failed to prove their respective cases. It had to come to its own conclusion through its own effort. It should complete, to the extent possible, the evidence produced by both the sides and neglect neither what was inculpating nor what was exculpating the accused. It had the unfettered rights to take all steps for *the manifestation of truth* which was the key word in the French Criminal justice process. The limits assigned to the court were only those dictated by the honour and conscience of the judges.

Once a criminal action had been brought before the court whether by the public prosecutor or a civil party it could not be withdrawn. The withdrawal of the civil party would affect only the civil action. The criminal action started at his instance or even rejected initially by the public prosecutor would however continue and the public prosecutor had to perform his duty till the end. It was for the court to decide, at any stage, upon its own satisfaction, whether to discharge the accused or not. It was thus seen that the court was vested with great powers and responsibility, though the matter was first processed
by two judicial officers namely the Public Prosecutor and the Investigating Judge.

**TRIBUNAL CORRECTIONAL AND ITS TRIAL PROCEDURE**

There were four methods by which a case might be brought before the tribunal correctional: direct citation, voluntary appearance, remitting by the juge d'instruction (or chambre d'accusation) and 'flagrant delit' procedure.

**Direct Citation:**

This was the commonest method for instituting proceedings and was used when the accused was not in custody. Once the procureur has obtained all the information he required about the offence, he would obtain personal details about the accused (such as his full name, date of birth, parents' name, marital status, children, nationality, military service, employment, domicile, education, reputation and any other relevant facts) by writing in the first instance to the police in the accused's home town. At the same time, the procureur would obtain a record of any previous convictions relating to the accused.5

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5. Any previous convictions must be carefully examined to see if they act as an aggravation to the offence, possibly thus changing its classification from a 'contravention' to a 'delit' or a 'delit' into a 'crime'.

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The procureur would then complete a form known as a 'ordre de citation' or 'cedule' giving the accused's name and address, the name and address of any 'partie civile' (if known), the names and address of any witnesses whom the procureur wished to be cited, and the charge against the accused. The 'ordre de citation' would then be sent to an officer of the court known as a 'huissier' (or 'huissier-audiencier') asking him to cite the accused and witnesses for a specified date. If the 'partie civile' was instituting the proceedings, he did so in the same way.

The 'huissier' would then serve a citation on the accused personally, the citation giving the time, date and place of the trial, and a copy of the charge as contained in the 'orde de citation' drafted by the procureur. If the accused was not at home, but the 'huissier' was satisfied that the address was correct, the 'huissier' might serve the citation on another inmate of the house. Should this not be possible, the 'huissier' would leave the citation at the office of the local mayor and at the same time send a registered letter to the accused telling him what had been done. It was then the responsibility of the accused to collect the citation and it was presumed that he had received the citation until the contrary is proved. The 'huissier' will complete an execution of service specifying how service was effected. One of the
difficulties of the last method of service was that if the post office was
unable to deliver the registered letter, they will retain if for fifteen days,
leaving a note for the accused to this effect. If the accused was unable
or unwilling to collect the letter, or did not receive the note from the post
office, he would have no knowledge of the citation. Furthermore the
'huiissier' not knew that the letter had not been received until fifteen
days had elapsed. Since the minimum notice that must be given to an
accused about his trial was five days, the case might be called in court
prior to the 'huiissier' being informed that the letter was not delivered,
and since it was presumed that the accused had been properly cited,
when the accused failed to appear, he might be judged in his
absence. In such circumstances, the first knowledge of the
proceedings by the accused would be the day of enforcement of the
penalty. He would however be entitled to appeal and have the case re-
heard by means of a process known as 'l'opposition'.

If the 'huiissier', in attempting to effect service found that the
accused did not reside at the specified address, he would report to the
procureur who might instruct the police to trace the accused. Should
the police unable to do so, the procureur must either drop the case, or

6. Although the court may decide to continue the case and order that the
accused be cited again.
place the matter before a juge d'instruction who also has the power to issue a warrant for the accused's arrest.

**Voluntary Appearance**

In theory, the accused could present himself voluntarily before the court and thus dispense with the need for a formal citation. In some provincial areas, the procureur might send a registered letter to the accused instructing him to come to court, using this method as an alternative to a formal citation, which would only be used if the accused failed to appear. In practice however, most procurers would prefer to cite the accused directly in the first instance, and the only use to which voluntary appearance was put was where the accused presented himself in answer to a citation in which some legal flaw was used.

**Permission by the juge d'instruction or chambre d'accusation**

If the case was remitted for trial by the juge d'instruction, the procureur after lodging the 'dossier' with the clerk of court, would either cite the accused to attend for trial (if liberated), or arrange that he be brought to the court (if in custody). While a remit from the chambre d'accusation was more uncommon, it would occur where such proceedings had been ordered on an appeal from a juge d'instruction;
or if the chamber decided that the offence was a 'delit' and not a 'crime';
or if the offences concerned consisted of various charges some of which were 'crime' and some were 'delits' and the accused's whereabouts were unknown. In such circumstances the cour d'assises might try the accused in his absence by a procedure known as 'contumace', which can obey be used for 'crimes'. While the cour d'assises may try a 'delit' along with a 'crime', it might not do so in the absence of the accused, and the chambre d'accusation in such a case might decide to remit the 'delit' to the tribunal correctional which may judge a 'delit' in the absence of the accused.

Flagrant delit procedure

If at the end of 'enquete flagrante' where the accused was in custody and the procureur decides that no further inquiries were required, the procureur may bring the accused before the court for trial forthwith. One disadvantage of this method was that the procureur did not have time to obtain further details concerning the accused's background and must rely on what was contained in the police report. At the same time as he decides on such procedure, the procureur would order the 'police judiciaire' to instruct witnesses to attend the trial, which means that witnesses might only receive a few hours' notice. In many cases, however, the procureur would decide that no witnesses
are necessary. If an essential witness did not appear, the court could either adjourn the case, or the procureur sends the case before a juge d'instruciton. The accused had the right to ask for an adjournment of three days to prepare his defence. The court must inform the accused of this right and his reply must be noted. The court might adjourn the case on its own initiative to obtain further information, in which case it had the discretion to liberate the accused or detain him in custody.

One of the difficulties about 'flagrant delit' procedure was that the accused must be brought before the court on the day on which the procureur made his decision, or at the latest, on the following day, which meant that if necessary, a special court might require to be convened on a Sunday or public holiday. Nevertheless 'flagrant delit' procedure was commonly used especially in busier areas.

ACCUSED'S PERSONAL APPEARANCE

If an accused person had been detained in custody prior to the trial, he would obviously be present at the trial proceedings. Should he not be in custody, an accused might request the court to deal with the case in his absence, usually by writing a letter to the president of the court. The letter might contain any mitigating factors, or the accused might be represented by a lawyer who would give such factors. Such a
course was only competent if the maximum penalty for the offence was less than a fine plus two year's imprisonment\textsuperscript{7}. The court might still insist on the personal appearance of the accused and on receipt of a letter from him, might adjourn the case, ordering him to appear in person.

If the accused had been properly cited, and either failed to attend or write a letter, he would be judged in his absence-i.e., by default-but later might have the right to have the case reheard.

Should an accused person failed to behave during trial proceedings and continually interrupted them, the president of the court had a discretion to remove him from the court, the trial then proceeded in his absence. At the end of the proceedings, the clerk of the court would read him an account thereof.

If there were several accused, the president might request one or all of them to leave the court while a witness was being examined, and then question each accused separately concerning the witness's

\textsuperscript{7.} In exceptional case the court may allow this to be done when the penalty is greater, but this is very rare. The court may also visit the sick bed of an accused too ill to attend court.
evidence. In such a case, the president must subsequently inform the accused what took place in his absence.8

**Acused's examination**

After the president has ordered the trial to begin and the accused has answered his name, the president would normally commence the proceedings by examining the accused. The examination might often commence with the president explaining to the accused the nature of the trial proceedings, and the rights available to him, unless the accused is legally represented. He will then question the accused about his identity and background history, including any previous convictions. The president was in possession of the 'dossier' (if the case has been to investigation by a juge d'instruction). The amount of personal detail elicited depends on the case and the attitude of the president.

The president would then read aloud the details of the charge and question the accused about it. He might read aloud excerpts from the witnesses' statements (to the police or juge d'instruction) and would

8. While this rule is specifically given for the court d'assises, it is understood it also applies to other criminal courts.
consider all the facts of the case, both against the accused and in his favour. If the accused disagrees with a statement made by a witness, or gives evidence contrary to it, the president will frequently question him vigorously—in the same manner as cross-examination at an English trial. He would certainly do so if he thinks the accused is lying or withholding evidence. He may ask the accused to demonstrate his evidence by referring to any sketch plans or other real evidence that is produced. While the president must be impartial, eliciting all evidence in the accused's favour to the same degree as any evidence against him, and must not indicate his opinions as to the guilt or innocence of the accused, the president's role was that of an investigating judge, and not as an arbitrator between the parties to the case. At the conclusion of the examination, the procureur might question the accused; the lawyer for the 'partie civile' and the accused's lawyer might suggest questions for the president to put to the accused (whether or not depended on the discretion of the president). If the president agrees, he may rephrase the question, or may merely tell the accused to answer it. Provided the examination by the president had been thorough, the number of such questions will be relatively few, and frequently none was suggested.
Throughout the examination, the accused, who did not take the oath, could refuse to answer any question put to him, but the court was then free to comment on his silence and draw any conclusions it wishes therefrom.\textsuperscript{9} If the accused was in custody he would remain with his police escort in special compartment-similar to the 'dock' in an English court, but if he was at liberty, he would answer questions while standing at the bar of the court, sitting nearby when not being examined.

The other two judges also had the right to question the accused but this was seldom done.

**Examination of the Witnesses**

After examining the accused, the president would examine any witnesses who had been cited, in any order he thought appropriate. The prosecution, 'partie civile' and defence might all cite witnesses to the trial\textsuperscript{10} by requesting the 'huissier' to do so. Failure to comply with a citation was a criminal offence to be punished by a fine and an award of expenses incurred on the witness's non-attendance; the witness was

\textsuperscript{9.} The Court may also consider any statement made by the accused to the police or a juge d'instruction.

\textsuperscript{10.} If an accused could not afford to pay witnesses expenses, the president might order this to be done at public expense. In appeal courts, the only witnesses heard are those cited by the court itself.
also liable to be arrested and brought to court. If necessary the court might attend a witness's sick bed to hear his evidence. A witness attending court was entitled to any expenses incurred and was immune from civil or criminal proceedings on any matter arising from his evidence in court. All persons might be compelled to attend court and give evidence in court. But the following person might not give evidence on oath (a) children aged less than sixteen years, (b) persons with criminal records (excluding minor road traffic offences, etc.) (c) any person related to the accused, (d) anyone with a direct personal interest in the outcome of the case (including the 'partie civile') and (e) any persons suffering from a loss of civil right (which was a penalty for certain criminal offences).

Since the court might base it's decision on facts contained in the 'dossier' or police report, the procureur would frequently refrain from citing any witnesses. He was most likely to take this action if there had been an investigation by a juge d'instruction, on the grounds that it was pointless to put the witness to further inconvenience and that the juge had already investigated the case fully. Even it was clear from the 'dossier' that the accused disagrees with such evidence, the procureur might still decide not to cite the witnesses. If however, there had been no such pre-trial investigation, especially where 'flagrant delit'
procedure was being used, the procureur would usually cite any witness whose evidence he estimated would not be accepted by the accused since such evidence had not been fully examined before the trial\textsuperscript{11}. Although whether, all or any of the witnesses for the prosecution were cited to court depended on the decision of the procureur (and the attitude of individual procureurs may vary), the court had an over-riding right to adjourn the case and decide to hear the witnesses in person if it was not satisfied with the contents of the 'dossier' or the police report. A complainant whose evidence did not seem to be in dispute would usually be notified of the trial by the procureur (thus giving him an opportunity to enter appearance as 'partie civile') but would not normally be cited as a witness. If the court insisted on proceeding in the absence of a witness whose presence was claimed by one of the parties to be essential, that party had the right to appeal at the conclusion of the trial.

When a witness was present in court, the president would normally hear him. The president would ask him his identity and

\textsuperscript{11} When using 'flagrant delit' procedure, the procureur would cite the witnesses by means of the police. This was also the method used in all cases where the witness was a police officer.
whether or not he had any relationship to any of the parties to the case.

He would then administer the following oath

"Do you swear to tell all the truth ad nothing but the truth?" to which the witness answer-- "I swear".

The president would then tell the witness to give his evidence in narrative form. In principle, the president would only interrupt to clarify any ambiguities, leaving any questions at the end of the narration. The president would examine the witness on any further points he wants brought out, and would question him about any contradictory evidence (including that of the accused) often reading such statements to him verbatim. The president might also confront witnesses giving conflicting evidence and question them jointly. If a witness's evidence contradicts that of the accused, the president may interrupt the witness to question the accused further. The president may also question the witness about any prior statement he made to the police, the juge d'instruction or any other person. In theory, a witness should give his evidence without the aid of notes, but this rule is no strictly adhered to.

At the conclusion of the president's examination the procureur may question the witness and the parties to the witness (in exactly the same way and with the same effect as at the end of the examination of the accused).
Prior to deposing, witnesses are kept out of court and separated from witnesses who have already given evidence and who remain in court. A brief record of the witness's evidence was made by the clerk of the court. The president would normally start with the witnesses for the 'partie civile'. They were heard before any witnesses for the defence. Expert witnesses were often heard last and they took a different oath -- 'Do you swear to give an account of your inquiries and findings on your honour and conscience? The defence might adduce evidence at any stage of the proceedings, whether or not such evidence was disclosed during the pre-trial inquiries, although if such evidence has to be accepted as credible, a reason should be given if necessary why such evidence was not made known during the pre-trial inquiries.

Since perjury was a criminal offence, a witness who have given evidence under oath and was suspected of lying, would usually be invited to remain in court and given a chance to retract his evidence. If he does so, he might not be prosecuted for perjury. All cases of perjury must be reported to the procureur who would decide what action should be taken. Although witnesses give evidence on oath before a juge d'instruction no perjury proceedings might be based on a statement made to a juge d'instruction. In general, it should be noted that with regard to the placing of evidence before the court, there was a marked
absence of procedural rules, the court being given as much freedom as possible to obtain all the fact about the case. This was in accordance with the inquisitorial nature of the proceedings.

Conclusion of Evidence and Closing of Addresses

At the conclusion of the evidence, the 'partie civile' had the right to make a closing address, in which he would review the evidence and comment thereon. He would usually ask the court to convict the accused and it was not uncommon for him to use very forceful terms in making this demand. He would then concentrate on any civil issues, often addressing the court at great length and sometimes stressing the suffering and inconvenience he had sustained as the victim of the offence. The procureur would address the court after the 'partie civile' and he might also review and comment on the evidence, his remarks are often very brief. He would usually give his views as to an appropriate sentence (which, of course, the court may ignore).

The defence would then address the court, either asking for an acquittal, or urging points that should be considered in mitigation. The accused might have septs lawyers to deal with the criminal and civil aspects of the case (in which case both may address the court), but he
was not represented by the counsels separately for criminal case and civil case, the closing address would deal with both the aspects.

The 'partie civile' and the procureur had the right to address the court further in reply to the defence, in which case the defence might make a final speech, as the defence must always have the right to the last word.

**Finding**

After listening to the closing addresses the court might adjourn the trial to obtain further evidence, or adjourn to consider its verdict, or may proceed to give its verdict immediately.

If the court decided that it required further information (perhaps as a result of what was said in a closing address, or to verify some fact given in mitigation, or to clarify the evidence), the court would adjourn the hearing to a later date. The court might then request the procureur to make further inquiries, giving him (or the other parties) the right to cite further witnesses to the adjourned date. As an alternative, the court would appoint one of the three judges to make further inquiries, in which case, the judge has the power of a juge d'instruction, and could
order an examination by experts, issue instructions, to the police by means of 'commissions rogatoires', etc.

Should the court adjourn merely to consider its verdict, this might be for a period of several minutes or several days--fourteen days being not uncommon. In deciding on its verdict, the court must consider whether or not it is competent to judge the offence. All verdicts must be motivated--i.e. must specify the legal reason on which they are based. The verdicts available to the court are; not guilty, guilty, guilty by default (non appearance of the accused) or absolution.

If the verdict was guilty, the court might specify any factor which aggravate or mitigate the offence. The court might also find the accused guilty of an offence other than the one specified in the charge (for example it may find the accused guilty of theft although he was charged with fraud). The sentence must be pronounced at the same time of the verdict. The sentence must be within the limits specified by law, but the reasons for deciding on a particular sentence need not be given. If the verdict was not guilty, the court might award the accused

12. While the tribunal correctional has competence to judge a 'contravention', it may not judge a 'crime'. If it holds that the offence should be classed as a 'crime', the court will remit the case to the procureur to allow him to commence proceedings in the cour d'assises. The proceedings in the tribunal correctional will not act as 'res judicata' since no verdict might be given.
damages against the 'partie civile' if the latter was responsible for instituting the proceedings and the court decides he acted vexatiously. Expenses and damages may not be awarded against the procureur.

A verdict of 'absolution' was very exceptional and only available in a restricted number of cases, mainly where one of the accused ceased to participate in the offence at the outset and thereafter attempt to prevent his co-accused continuing in their acts. A verdict of absolution had the same effect as an acquittal.\textsuperscript{13} At the same time as deciding on verdict and sentence, the court would settle any civil issues. If the accused got acquitted, the court could not make an award of damages against him in favour of the 'partie civile'; should he be convicted, such an award might be made, the court not being bound by the specification and amounts of the civil claim.

In certain instances, the procureur was required to give notification of a conviction to a particular body or person, for example if the accused was a doctor, lawyer, school teacher, policeman, member

\textsuperscript{13} Except in the cour d'assises where an accused given such a verdict may still lose the civil claim and have an award of damages made against him.
of the armed forces, etc., the procureur must notify the appropriate
governing or disciplinary body.

TRIBUNAL DE POLICE - PROCEDURE

The tribunal de police had competence to judge offences
classed as 'contravention's' which were divided into five classes. Some
minor 'contravention's', such as parking offences might be disposed of
without the need for court proceedings. The accused paid a fixed
penalty known as 'l' amende forfaitaire' to the policeman collecting, the
fine on the spot, and could purchase a stamp to the value of offence. If
the accused was unable or unwilling to pay the penalty, sent the same
to the appropriate authorities within certain time limits. If the accused
failed to pay the penalty he was either cited to court, or dealt with by a
shortened form of proceedings known as 'procedure simplify'. The
latter proceedings were competent where there was no civil claim, the
maximum fine was less than 400 francs, there were no previous
convictions to aggravate the offence, no other offences where
committed at the same time, inquiries has not been commenced by a
juge d'instruction, and statute did not prohibit the use of such
proceedings--all of which conditions had to apply. The police lodged
the complaint within ten days. The judge determined the fine (known
as 'i' amende de composition') within five days. The clerk of court notified the accused of the fine within fifteen days, the accused having a further fifteen days to pay the fine. If the accused paid the fine, he could not later lodge an appeal and the offence counted as a conviction for record purposes. If the accused failed to pay the fine, he was cited to attend court, and the case was dealt with in the usual way.

The 'amende de composition' was replaced by a system known as the 'ordonnance penale'. By this procedure the court might convict the accused without the necessity of a trial or any form of hearing. The accused had, however, a right of appeal by means of 'l' opposition'.

French Code Penal States that -

"All cases falling within the jurisdiction of the tribunal de police may be dealt with my means of an 'ordonnance penale', even where the accused has a previous conviction for an analogous offence".

(There were some minor exceptions to this rule). Therefore although the 'ordonnance penale' might be used for offences which attract only a monetary penalty, extended its use to cover offences which carry a penalty of imprisonment as an alternative to a fine, or which entitled the court to impose disqualification from driving. However, if the judge decided that imprisonment was the only appropriate penalty, he would
return the case to the procureur de la Republique who would then re-
commence proceedings in the normal way (i.e. by direct citation).

The use of 'l' ordonnance penale was not compulsory and the
procureur had a discretion to proceed in the normal way or by the
'ordonnance penale'.

Where he decided to proceed by means of an 'ordonnance
penale' he would lodge the police report with the judge, together with
written submissions giving his views on the appropriate penalty.

The judge was not bound by written submissions. Furthermore if
the judge decided to examine the case more fully by means of a trial, or
that a penalty other than a monetary one should be imposed, the judge
would return the case to the procureur so that he could proceed to trial
in the usual way. Where the procureur had taken proceedings by way
of an 'ordonnance penale' and the judge decided that the case might be
disposed of by such procedure, the judge had discretion as to the
amount of the fine (provided it is within the minimum and the maximum
limits proscribed by law) to be imposed.
The judge would base his decision on the facts submitted by the procureur in the form of a police report. This report might contain a minimal amount of information about the accused's personal circumstances. The judge's decision did not require to be accompanied by the reasons there for (which is the normal rule). It was not necessary to serve a notice to the accused by registered post. Since the procureur might appeal (by means of 'l' opposition') against sentence within ten days of the determination of a case, the notice of the court's decision was not posted to the accused until a period of ten days had elapsed.

After the decision had been notified to the accused by registered letter and he had acknowledged receipt, the accused had a period of thirty days from the date of notification to lodge an appeal.

(The 'ordonnance penale' procedure differed from a trial in the absence of the accused. The latter proceedings took the form of a trial in open court after the accused had been cited and had failed to appeal which he was given by 'ordonnance penale'). Once the penalty had been intimated to the accused, he had the following choice of action.
Firstly - He might pay the fine and not exercise his right of appeal. If he followed this course, the 'ordonnance penale' had the same effect as a decision given at the end of a normal trial. The case was thus disposed of without the necessity of personal appearance by the accused.

Secondly - The accused might fail both to pay the fine and to appeal. In these circumstances, the accused, by failing to appeal would be taken as acquiescing to the court's decision and steps would be taken to enforce payment of the fine, unless it could be shown that the accused in person did not receive intimation of the court's decision - (for example, if the registered letter was accepted by the accused's wife or other member of this household). In case no personal intimation had been received the accused had the right to appeal within a period of ten days of the court's decision coming to his personal knowledge, no matter how he learned of it. With regard to enforcing the penalty, it should be noted that this was not done by the court, but by an official employed by the Ministry of Finance. If the accused was unable to pay the fine immediately, he must arrange with the office whether time was to be allowed for payment, or whether payment by instalments was acceptable. It was only whether payment by instalments was acceptable. It was only where the accused failed to pay, that the
procureur would order the police to arrest the accused and took him to prison where he would serve an alternative period of imprisonment.

Thirdly - The accused might exercise his right to appeal, in which case the matter was remitted to the court for trial and the decision given by the 'ordonnance penale' was set aside. The accused would be cited to attend for trial but, if he failed to do so, the trial would proceed in his absence, in which case the court had no option but to re-impose the finding and sentence pronounced by means of the 'ordonnance penale'. The accused might not lodge any subsequent appeal (except on a point of law) by means of a 'pourvois en cassation'.

The effect of l'ordonnance penale' on the rights of the 'partie civile' was as follows;

Should the 'partie civile' institute criminal proceedings prior to the court deciding the criminal case by means of an 'ordonnance penale', then the latter procedure was incompetent. On the other hand, where a decision had been made by an 'ordonnance penale' and procureur has lodged an appeal, the 'partie civile' may still lodge a civil claim after the original decision but before the court had decided on the appeal (i.e. before the re-trial), in which case the court might also give a decision...
on the civil issues. Finally where a 'partie civile' only lodges his claim after the case had been decided by an 'ordonnance penale' and no appeal had been taken by the procureur, the tribunal de police was competent to decide the civil case even although the criminal case had been concluded. However, when a civil claim was lodged after the criminal case had been decided by an 'ordonnance penale', the tribunal de police or any court before which the claim was pursued, was not bound by the decision of the criminal court.

Trials in the Tribunal de Police

All accused appeared before the court by means of direct citation (although 'voluntary appearance' may be used to cure any defect in the citation). While a remit from the juge d'instruction or chambre d'accusation was competent it was exceedingly uncommon. No accused would be brought to the court in custody since the police power of arrest ('garde a vue') did not apply to 'contravention's'. While in theory, the trial proceedings were identical to the tribunal correctional, in practice it depended on how the 'contravention was classified. Should it fall into the first four classes, the accused was presumed to be guilty unless he established his innocence. These offences included most minor road traffic infractions such as exceeding the speed limit, ignoring traffic lights, etc. The accused would step
forward when his name was called in court, the president would ask if he admitted the offence, and if he did, he would be fined—the entire proceedings lasting less than ten seconds. If he had an explanation to make, the president would listen to the same and either ignore it, accepted it or adjourn the case for a fuller hearing at a later date.14 While the prosecution in court was represented by a 'police commissaire', the procureur had the overall responsibility and would intervene if required. Should some difficult legal point arise, the court would almost certainly adjourn the proceedings to allow the procureur an opportunity to take over the conduct of the proceedings.

If the 'contravention' tell within the fifth class (which covers such offences as assaults, road accidents causing injury, etc.) the prosecution was conducted by the procureur in person. This class of 'contravention's' were formerly 'delits', but were reduced by statute to 'contravention's' because of the pressure of business in the tribunal.

14. In Paris, extensive use is made of modern techniques for dealing with such road traffic offences. The police have cars equipped with an apparatus for photographing moving vehicle offences, the photograph showing the time and if need be the speed of the vehicle. The owner of the offending car will be presumed to be the driver until the former proves to the contrary. If the owner is a company, it must disclose the particulars of the driver. Paris deals with approximately 32 million such cases per annum. While the prosecution process has effectively been reduced to a system which is in the hands of the police, the procureur has overall control, and it is he who deals with any legal point or other difficulty arising from a case.
correctional and the relatively minor nature of the offences compared with the other case taken in that court. They were however dealt with in exactly the same way as 'delits' in so far as the pre-trial inquiries or court proceedings were concerned. In the trial in the tribunal correctional, since the offences triable there include road accidents there was often a 'partie civile'. The civil issued may often play a larger role in the trial than the criminal, and since lengthy and detailed written submissions were often made concerning the civil claim, the court would frequently adjourn for fourteen days to consider its verdict, sentence and finding on the civil claims. There were two points of interest in such cases. Firstly it was quite common in a road accident case involving two accused and several civil claimants representing injured parties, for the entire trial proceedings (covering the criminal and civil aspects) to be concluded within one hour. Secondly, because of the rules of prescription the institution of criminal proceedings could not be delayed, the trial would frequently take place before any injured party had fully recovered or before the full extent of the civil liability could be known. In such case the court might make an interim award

15. As in the tribunal correctional, a motor insurance company can make appearance as 'partie civile', hence the accused may be defended by two lawyer, one representing the criminal interests and the other concerned with defending the civil claim.
of damages, continue the case (if need be to several times) on the civil aspect of the case, until the full extent of the civil liability is known.

**TRAIL PROCEDURE - COUR D'ASSIES**

When the chambre d'accusation decided that a case to be tried in the cour d'assises, the 'dossier' was sent to the clerk of that court, and a copy of the remit was served on the accused. The remit gave a summary of the facts of the case and of the accused's background. The accused was interviewed by the president of the cour d'assises prior to the trial. If he was at liberty, he must give himself into custody on the day before his first examination, but if he was in custody, he would be transferred to the prison nearest the court, if not already there. The president would have the accused brought to his chambers in order to examine him. While the public were not admitted, the accused's legal adviser might be present, as may the procureur general (who in practice never attends). The 'partie civil' and his lawyer might not be present. The purpose of the examination was to allow the president to verify the accused's identity, that he had received a copy of the remit from the chambre d'accusation and to ensure he was legally represented. If the accused did not have a lawyer, the president would arrange for one to be appointed. In very exceptional cases, the accused might request that he be represented by a parent or friend,
who was competent. At this examination the facts of the case would not be discussed, although there was nothing to prevent an accused protesting his innocence. A record of the examination was made, being signed by the clerk of the court, the president and the accused.

At any time before the start of the trial, the president had a discretion to order further inquiries if he thinks such a course was necessary. He may make such inquiries personally, or delegate this task to one of the other judges or to a juge d'instruction. The president might order a separation or joinder of trials, provided that in the case of joinder, the other trial or accused must have been put down for the same session. On his own initiative, or on the motion of the procureur general, the president might adjourn the trial to a later session.

The prosecution must notify the defence of any witness it sought to call at least twenty-four hours before the start of the trial; the defence had a similar obligation to notify both the prosecution and the 'partie civile'; the 'partie civile' must notify the defence, but need not notify the prosecutor, nor need the prosecutor notify him. Failure to give the above notification would entitle the party not notified to object to the witness at the trial, but the president had discretionary right to allow the witness to be heared. Each accused was sent a copy of each witness's
statement and each expert report before the start of the trial, and the accused's lawyer has right of access to the 'dossier'. A list of potential jurors must be sent to the accused at least forty-eight hours before the trial, although minor amendments might be made to the list at a latter time. The trial might not take place within five days of the first examination of the accused by the president unless the defence waive this right.

The trial commenced with the president asking the accused his full name, date and place of birth, address and occupation. As the accused was in custody he would be in the dock with his police escort. The clerk of court then reads out the names of all potential jurors to ensure that all are present. All the names were then put into an urn, and the president draws nine names therefrom. As each juror's name was called, he takes his place on the bench, four sitting on one side of the three judges and five on the other. The prosecution was allowed four peremptory challenges of jurors, and the defence five, regardless of how many accused there were. \[\text{16}\] No reason was given for the

16. If there were more than five accused, they would draw lots as to who may exercise the challenge - Mazurier, C.di Cass. 15 December 1959. As a general rule, the prosecution would not challenge a juror, accepting the jury as it was ballotted. However, some juror had prosecutors may challenge a juror at the latter's request if the juror has some urgent personal business to attend to on the day of the trial.
challenging. If the trial seems to be extremely long, the president had a discretion to order that one or two extra jurors be allotted. These supplementary jurors would sit beside the original jurors being then able to replace any of the original jurors who falls ill, etc., during the course of the trial. After the jury had been selected the president reads out their names and administers the oath--"do you swear and promises before God and man to examine with the most scrupulous attention the charges brought against (the accused); not betray either the interests of the accused person or those of society which accuses him; not to communicate with any person until after you have reached your verdict; to be guided neither by hate, malice, fear nor affection; to come to your decision after hearing the charges and defences according to your conscience and personal conviction with the impartiality and resolution of an honest, free man; and to maintain the secrecy of your deliberations even after the termination of your duties'. Each juror in turn replied 'I so swear'.

During the course the trial of juror might ask the president to put specific questions to the accused or witnesses, and if authorised by the president, may put such questions in person--such an occurrence being very rare. The part of the oath requiring the jurors 'not to communicate
with anyone’ means that the jurors must not discuss the facts of the case with anyone else prior to reaching their verdict. The jurors must pay close attention to the proceedings—for example a juror falling asleep could render the proceedings null and void. A juror must not display prejudice to any party to the case, nor indicate in any way that he had prejudged the cases. A juror breaking one of these rules could invalidate the entire trial, in which case the president would probably stop the proceedings and order that they be recommenced at the next session.

The ‘huissier’ (who was responsible for citing the witnesses) would then read out the names of the witnesses, each answering to his name. If any witness was absent, and if all the parties agreed to proceed in his absence, the president might allow the trial to continue, failing which he would adjourn the trial to the next session. If any of the parties had brought a witness to court who had not been cited, he would intimate the presence of this witness, at the same time explaining why the witness was not properly cited and intimated to the other parties, who at this stage might object to the witness. Normally the president would not give a ruling until later. All witnesses would then be taken from the court to the witness room.
The clerk of court then read the remit from the chambre d'accusation in full. The president would commence by examining the accused, followed by the witnesses—the procedure being the same as in the tribunal correctional. The oath administered to the witnesses was slightly different, the witnesses swearing 'to speak without hatred or fear, and to tell the whole truth and nothing but the truth'. As a general rule no record was kept of the evidence in the cour d'assises since no appeal was competent, but the president may order the clerk of court to note the evidence of a witness making contradictory statements.

The principal difference between the cour d'assises and the tribunal correctional was that since the jury did not have access to the 'dossier' all the evidence should be placed before the court orally. In other words any witness whose evidence was to be given to the jury for consideration, must be cited to court and examined. With regard to the accused's background, such evidence was elicited during the examination of the accused. The president of the cour d'assises also had a discretionary power to 'take all steps which he believed to be useful in order to discover the truth', which was not given to presidents of inferior courts.17 This power included the parties, to call for further

17. Although the president of an inferior court may adjourn the trial to obtain further information.
productions to be logged, order any document (including anonymous letters) to be read aloud, order an examination by experts and gave the jury anything which might assist them in their deliberations (for example sketch plan, written statements by witnesses, etc.). Such a power, however, did not allow the president to break the rules of procedure (for example he might not place evidence before the court if it had been improperly obtained). The president might not use this power to adjourn the trial to a later date, except on cause shown and with the consent of all the parties.

At the conclusion of the evidence, the president would frequently adjourn the court for thirty minutes after which the parties to the case would address the court. The procedure was exactly the same as in the tribunal correctional except that since the parties were addressing a lay jury the address would tend to be longer and more reasoned. After the lawyer for the defence had finished his address, the president normally asked the accused in person if they had anything further to say.

The president then addressed the jury. He would determine the issues for the jury to decide, reducing the same to questions for the jury to answer. In theory the questions should always be read aloud to the
court, but the parties may dispense with such reading, and in practice, while it depends on the attitude of the individual president, the questions were seldom read aloud in many courts. The questions must be formed in such a way as to be capable of being answered by a simple affirmative or negative. The basic questions were -- 'Is the accused guilty of... (specifying the offence in detail)?; 'Was the offence accompanied by ... (specifying aggravating circumstances)'; 'Were there any mitigating circumstances in the accused’s favour?’ The president then tells the jury -- ‘The law does not require judges to account for the means by which they are convinced, nor does it prescribe rules by which they must assess the sufficiency of evidence; the law only required that they asked themselves in silence, infreflection and with a sincere conscience what impression the evidence brought against the accused and his defence thereto had made upon them. The law only asked them one question which encompassed their entire duties-- ‘Are you thoroughly convinced?’ . This formula was also prominently displayed in the retiring room.

The jury, the president and the other two judges then retired to the same room to consider verdict and sentence. No one might enter or leave the jury room until this was given. In their deliberations, they might not consider any evidence that had not been given orally at the
trial. The court (i.e. judges and jury) must answer each of the president's questions. This was done by writing 'Yes' or 'No' on a slip of paper which was folded and put into an urn. This ensures secrecy of the votes. The president then counted the votes. Any blank paper or one that was indistinct, or did not answer by a simple 'Yes' or 'No' would be counted as a vote in favour of the accused. After the voting, the ballot papers were burnt. Every answer unfavourable to the accused must have at least eight votes to be binding--thus requiring at least the majority of the lay jurors. The verdicts could be guilty, or not guilty or 'absolution'--as in the tribunal correctional.

If the verdict was guilty, the court then proceeded to vote on sentence, which must be within the minimum and maximum limits specified by the law. Each person wrote down what he thought was an appropriate sentence and the voting was dealt with in the same way as when voting on the verdict--except a simple majority (i.e. seven votes) was sufficient to determine sentence. If on the first ballot, there was no majority, the most severe proposed sentence was struck off, and the matter again voted on--this procedure being followed until a majority was obtained.
The answers to all the questions and the sentence were noted, the note being signed by the president and the foreman of the jury. The court then reconvened and read the questions and answers, including the sentence, to the accused. If the accused was convicted, the president would inform him briefly of the steps he might take if he wished to appeal.

Should there be a civil claim, the court would adjourn briefly, then reconvene without the jury. The parties to the case might then address the court further in relation to the civil claim. The procureur general also had such a right; he seldom exercised it though. The court might have appointed one of the judges to investigate the civil claim, in which case he would give his report at this stage. The court normally then adjourned to consider the civil claim, it reconvened to give its decision. The court could still award damages against the accused if he was acquitted or given a verdict of 'absolution'.

The clerk of court must write a minute with the verdict, sentence and statutory provisions contravened. Within three days after the verdict, he must write a further minute, recording the proceedings (but not the evidence). Both minutes were to be signed by the president.
It should be noted that no appeal was competent from the cour d'assises, except to the cour de cassation on a point of law.

'Contumace' - Trial in Absence

'Contumace' was a procedure whereby the cour d'assises might try an accused in his absence if he failed to appear for trial. The trial was held without a jury, and the court only considered the dossier, not hearing evidence from the witnesses. If the accused was convicted and was arrested before the time for enforcing the penalty prescribed, he must be re-tried in the normal way. The main effect was that all the accused's possessions were sequestrated and all civil claim was settled. A subsequent re-trial would however lift the sequestration and reconsider the civil issues. 'Contumace' was not frequently used, especially since persons accused of 'crimes' were invariably detained in custody awaiting trial. If an accused had been liberated and failed to appear for trial, the court would normally proceed by 'contumace', rather than adjourn the trial, the court having no power to issue a warrant for the accused's arrest.
THE 'PARTIE CIVILE'

While the 'partie civile' was not directly concerned with the administration of justice, it is appropriate that mention should be made here its position in criminal proceedings.

Any person who had sustained damage or loss as the result of a criminal offence had a choice of three courses of action - raising a separate civil action, or entering appearance in the criminal action (which would then settle the civil issues) or instituting criminal proceedings against the accused (the procureur subsequently taking responsibility for the prosecution, leaving the victim to pursue his civil claim which would be decided in the course of the criminal proceedings.

These rights were partly the vestiges of an accusatorial system where the victim (and not the public prosecutor) had the responsibility of seeking justice in the courts and partly a remedy against in action on the part of the public prosecutor.

The following person might act as 'partie civile' - the victim (who had an option to proceed, not to proceed or settle); the heirs of the victim (who has an option to proceed, not to proceed or settle); the heir of the victim (in their own right if the offence caused the death of the
victim, otherwise only quad any rights appertaining to the victim) any other person to whom the victim had assigned has rights of action. Although the general rule was that only persons who have personally and directly suffered loss (and the Cour de Cassation tends to interpret this rule strictly when judging on the competence of civil claims), there were various exceptions, notably - fire insurance companies acting on behalf of the victim of a fire; accident insurance companies, in certain cases, where the victim had suffered loss due to homicide, assault or negligence; motor insurance companies, and other statutory exceptions including the social security ministry which might sue the accused in respect of any injury benefits paid to the victim as a result of incapacity following on the criminal offence.

The right to recover damages from an accused person was not without point. If the accused went to prison, the payment of any damages awarded against him may be enforced on his release; if he is not sent to prison, the award may be enforced immediately. The decision to enforce payment of an award of damages, how payment should be made, and whether partial settlement should be accepted etc., are left to the 'partie civile' but the remedies at his disposal include
arrestment of the accused's wages.\textsuperscript{18} The ground on which a 'partie civile' might claim damages could be material or moral, but courts tended to disallow claims if the damage was too remote, or if the state protected the same interests.

\textbf{Choice of action available to the 'partie civile'.}

With regard to the choice of action available to the victim of a criminal offence, the raising of a separate civil action was usually avoided where possible, since apart from the fact that it would be listed until the criminal case is settled, civil procedure in French system tends to be lengthy, cumbersome and expensive. As a result, most victims prefer to join their civil claim to the criminal action, by entering appearance as 'partie civile' after criminal proceedings have been instituted. Such appearance might be entered before the trial, with the juge d'instruction if he is making pre-trial inquiries, or at the trial itself. The victim thus benefited from the criminal action, having a right of audience at the trial which would settle any civil issue. To this extent the victim, as pursuer in the civil aspect of the case, acted as an additional prosecutor.

\textsuperscript{18} See the case of Vigne, 1954 - the accused was charged with fraud in connection with butcher meat. The court held that the Union of Family Associations of the Department of Herault had no locus standi in entering a civil claim since the state is responsible for protecting public health.
Institution of Criminal Proceedings by the 'partie civile'

As an alternative to entering appearance in the criminal action, if no such action has already been opined, or if the procureur de al Republique refuses to prosecute, the victim might himself institute criminal proceedings. Once proceedings had been opened in this way, the procureur must take over the conduct of the prosecution, regardless of his views thereon and even if he had previously decided not to prosecute. If the offence was classed as a 'contravention' or a 'delit', the 'partie civile' would cite the accused to attend court, having first applied to the procureur for a date for the appearance. The procureur would normally obtain any record of the accused's previous convictions, background information, and any police report that happens to exist. If no such police information exists the procureur will normally rely on the case prepared by the 'partie civile'. At the trial diet, while the procureur was technically responsible for the conduct of the prosecution, he would normally leave it to the 'partie civile' to conduct the case, restricting his part in the proceedings to commenting on the case. In the course of the trial, should it appear that further investigations were necessary, or should the procureur decide to take a more active part, he might suggest that the court adjourn the case part-heard to a later date, having made it plain that he was not responsible for the initial institution of the proceedings. If the offence was classified as a 'crime'
the 'partie civile' could not cite the accused to court, but must appear before a judge d'instruction and enter a formal complaint known as a 'plainte avec constitution de partie civile'. The judge would order intimation of this to the procureur and the judge must then proceed to investigate the complaint unless he thought it was incompetent to do so. The 'partie civile' had the option of pursuing this course if the offence was classed as a 'delit'.

The raising of the criminal action by the 'partie civile' prevents the same accused from being subsequently prosecuted for the same offence by the procureur, even if fresh evidence came to light, but once proceedings had been instituted by the 'partie civile', he lost all control over the course thereof, should he later wished them dropped.

As a general rule, before instituting criminal proceedings himself, the 'partie civile' would either enquire of the procureur if the latter contemplated proceedings, or would make a complaint ('plainte') to the procureur in the hope that this would cause the procureur to institute such proceedings, thus allowing the 'partie civile' to enter subsequent appearance in regard to the civil claim.
Right of the 'Partie civile'

Regardless of whether he enters appearance in the criminal action, or institutes the criminal proceedings himself, the 'partie civile' had following rights at the trial: to be legally represented; to suggest questions to be put to the accused or witnesses; to cite witnesses; to give evidence without taking the oath; to submit a case which the court must answer; at the conclusion of the evidence, to give his views thereon (his 'summing up' being before that of the prosecution and defence); in the cour d'assises, to address the court on the civil issues outwit the presence of the jury - i.e. after the criminal aspect of the case has been decided. If the case is investigated by a juge d'instruction, the 'partie civile' may refuse to be questioned except in the presence of his lawyer (who has a right of access to the 'dossier' recording the juge's investigation); comment on a request by the accused to be released from pre-trial custody; ask for expert evidence to be obtained; appeal certain decisions of the juge d'instruction, of which he must be given notice and finally he has right of audience before the chambre d'accusation when such appeals were being considered, and when the chambre was deciding on the question of committal for trial.
Criminal Appeals under the French System

There were four methods of appealing against the Judgement of a French criminal court. Appeal to the cour d' appel, appeal to the cour de cassation ('pourvois en cassation') were the two common methods of appeal proper. There was also a method of appeal available when the accused was judged in his absence ('l' opposition) and an extremely rare type of appeal to the cour de cassation known as 'pourvois en revision'. The means of appeal available depended on the circumstances of the case, but all had the effect of suspending execution of sentence until appeal was decided.19

Appeal to the cour d' Appel

At Pondicherry the cour d' appel had jurisdiction to hear appeals against any Judgment rendered in the tribunal correctional, and any judgement of the tribunal de police (if the sentence exceeds five days' imprisonment or a fine of sixty francs). It could not consider an appeal against Judgment of the cour d'assises.

An appeal might be considered before the termination of the trial in the interior court if the appeal concerned a refusal to liberate the

19. Unless in exceptional cases where the court ordered the sentence be executed as soon as it is pronounced.
accused from custody (i.e. after the case had been remitted for trial by the Judge d' instruction) or any decision by the inferior court concerning a preliminary plea, which if upheld would have the effect of terminating proceedings before the trial proper had started. (Please such as Jurisdiction, amnesty, prescription, insanity, etc). Appeal concerning pre-trial custody would be considered within 24 hours of appeal being lodged, otherwise the time limit for deciding an appeal was one month.

An appeal might be lodged against the verdict or sentence of the inferior trial court. While the cour d' appel would normally consider both these matters, it was always open to the party lodging the appeal to indicate which particular aspect of the case he appealed against, in which case the cour d' appel would not concentrate its deliberations on that aspect. An appeal might not be taken to the cour d'appel if an appeal by way of 'd' opposition' was competent, until the proceedings by 'l' opposition' have been decided.

An appeal right be lodged by the accused, the 'partie civile', the procureur de la Re'publique or the procureur General, and if one party lodged an appeal, that entitled the others to lodge counter-appeal. If the accused preferred appeal and there was no counter appeal, the
cour d' appel might not increase his sentence. In practice therefore the procureur de la Republique would always lodge a counter appeal, so that the cour d' appel had the power to increase or decrease sentence as it deemed fit. If there were several accused, of whom only one lodged an appeal, the procureur would probably lodge notice of appeal concerning all accused. Should he only lodge a counter appeal against the one accused who had appealed, then that accused could claim in the cour d'appel that he only played a minor part in the commission of the offence and that his co-accused were the main culprits.

Apart from right to lodge a counter appeal, the procureur might appeal on his own initiative, even if such an appeal concerns sentence only (which was known as an appel a' minina'). Furthermore in certain exceptional instances where the procureur thought that the sentence imposed was unjust, he might even appeal in the interests of the accused. For example, if an accused judged in absence lodged an appeal by way of 'I' opposition' giving new facts indicating his innocence, of fails to appear for the hearing he would be rendered with the original sentence. In such circumstances if the procureur accepted that the accused was innocent, he might lodge an appeal which would result in acquittal of the accused. The procureur might also appeal if he
thought the sentence was improper or illegal, since it would be his duty otherwise to enforce such a sentence.

If the procureur or the accused appealed, the court might not increase any award of damages made to the 'partie civilie', but should the 'partie civilie' appeal, the award might be increased up to the limit originally asked by him plus any further loss incurred due to the delay in enforcing payment of the award. If the partie civile alone had preferred appeal, the cour d' appel might only consider the civil aspect of the case, but might not decrease the award made by the inferior court. When the partie civilie' preferred appeal against an acquittal verdict, the procureur would also normally lodge a similar appeal (since failure to do so would merely entitle the cour d'appel to award damages if it upheld the appeal, but not to convict the accused), but if the original proceedings were instituted by the 'partie civile' the procureur would normally lodge such an appeal.

All notice of appeals were lodged to the clerk of the court within ten days of the pronouncement of the Judgement. The accused who was undergoing imprisonment lodged appeals through the governor of the prison who forwarded the same to the clerk of the court. The procureur general had a general power to lodge an appeal within two
months of the Judgement. There were minor exceptions to the ten-day rule-such as where the accused was not present in court at the time of the Judgement.

The appeals were heard by the cour d' appel (or more accurately by the chambre des appeals correctionnels de la cour d' appel) which would normally appoint one of its Judges to investigate the case and make a report thereon. Those reports merely concerned the facts of the case, and did not give the Judge's opinions. At the appeal hearings the courts considered the report. The court might also re-examine the accused (which was quite frequently done) and had a discretion to re-hear the witnesses. If would also examine the notes of the evidence took by the clerk of the original court, but never considered fresh evidence. The appeal hearing virtually involved a re-trial of the case, the procedure was the same as in the tribunal correctional, unless the parties stated that the appeal referred to one aspect of the case only.

At the end of the hearing the court might uphold the original verdict, or modified it or rejected the appeal. When the court acquitted the accused it also awarded damages to him. But it was most unusual. It was decided that there was a procedural irregularity in the original proceedings, the appeal itself acted as a fresh trial and a verdict and
sentence was made. If it was held that the offence was a 'crime' and therefore that the trial in the tribunal correctional was incompetent, the cour d'appel would set aside the original verdict and reported the case formally to the prosecutor who then had a discretion to commence proceedings leading to a fresh trial in the cour d'assises. When the cour d'appel found that the tribunal police dealt with an offence classed as a 'delit', the cour d'appel itself tried those cases.

**Cour de cassation - 'purvois en cassation'**

The cour de cassation was the Apex court under the French system. There was no cour de cassation at Pondicherry. All the appeals from Pondicherry were taken to the cour de cassation at Paris in France. Appeals were taken to the cour de cassation at Paris on a point of law provided no other appeal procedure was competent. For example, an appeal might not be taken against the ruling of a judge d'instruction since such appeals might not be taken to the chambre d'accusation. But an appeal was competent against a decision of the chambre d'accusation. An appeal was not taken from the tribunal correctional, since such appeals were competently taken in the cour d'appel. Appeals were also taken directly from tribunal de police if the sentence was less than five days imprisonment or a fine of sixty francs, since in such cases no appeal might be taken to the cour d'appel.
Appeals might also be direct from the cour d'assess. The appeals were preferred on the point of law - i.e. procedure.

In the court of cassation appeals were preferred by any party provided he had been prejudiced by the decision or acting's of the inferior court. Notice of appeal was lodged within five days of the judgement being given in the inferior court, unless a valid reason was given for the belated lodging. The notice of appeal was lodged with the clerk of court by notifying the same to other parties. Caution for expenses must be given and the full grounds of appeal were lodged within ten days. If the sentence of the original court was more than six months imprisonment, and the appeal was taken by the accused, he must be given himself into custody unless the original court allows otherwise.

The appeals were heard by the chamber criminelle de la cour de cassation which would first hear a factual report by one of the Judges and then heard the parties to the case. The general procedure was as in the cour d' appel. The court was not restricted to consider the aspect of the case that was appealed but might consider any aspect of procedure, but it might not consider the civil aspects of the case unless
the 'partie civile appeals, and likewise might consider the civil aspects if the 'partie civilie' alone appeals.

The court had the powers to refuse appeal because the appellant failed to appear at the hearing or abandoned his appeal, it also had powers to refuse the appeal because the appeal itself was incompetent, or on the merits of the appeal itself. The court would also pointed out that if an irregularity had occurred, but that the irregularity was so trivial or technical that the original judgement should stand. If however the irregularity was grave and caused prejudice to the appellant, the court might annual the earlier judgement.

Then the cour de cassation would remit the case for retrial to another court. For example - if the case came from the tribunal correctional it would be remitted to a tribunal correctional composed of different judges from the original court, or if the cour de cassation decided that the offence was a 'crime' it remitted the case so that it could be tried in the cour d'assises.

The court to which a case was remitted was not bound by the decision of the cour de cassation. For example - the trial court might decide it was incompetent to deal with the offence. If the court did not
follow the ruling of the court de cassation, a second appeal might be taken on the same grounds to the cour de cassation. At the second hearing in the cour de cassation, the court would sit with a full bench of thirty-five judges (chambres reunies), the court not being bound by its own previous decision. The final decision of the cour de cassation must be and was followed in the court to which the case is again remitted for trial.

In addition to the above type of appeal, the procureur general had the right to appeal to the cour de cassation merely with a view to obtain a decision to clarify the law. In such a case, the decision of the court could not affect any of the parties to the case. The Minister of Justice could also instruct that such an appeal be taken at any stage in the proceedings and if this was done the decision of the court could not be applied if adverse to any of the parties to the case.

L' Opposition

The procedure known as 'l' opposition was practiced at Pondicherry during the French system. It was not so much an appeal, but merely a means to have the case re-tried. It was applied in the case of tribunal de police and tribunal correctional where the accused had been judged in his absence. Such an accused might request the
court to re-hear the case in his presence. It was only competent when the absence of the accused was due to the fact that he was not properly cited, or had no knowledge of his citation. L' opposition proceedings were commenced within ten days of the accused receiving notification of the court's judgement. To commence such proceedings all that was required was that the accused should notify the procureur that he wishes to appeal by means of 'l' opposition. Then the original verdict was reduced and the proceedings re-commenced as if the first trial had never taken place. The accused was cited to attend the new trial and if fails to attend the original judgement would be re-affirmed and there would be no further 'l' opposition under any circumstance.

**Pourvois en Revision**

A 'pourvois en revision' was a means of appeal whereby the cour de cassation might reduce a verdict of guilty because of new evidence coming to light after the trial. There are instances where these types of revisions were also preferred to the cour de cassation at Paris from Pondicherry. This type of appeal was competent in a case of murder where it was later proved that the victim was alive. It was also possible when if another person was subsequently convicted for the same offence, thus making it impossible for the accused to be guilty. It was also possible where if a witness at the trial was later convicted of
perjury in regard to his evidence, provided knowledge of the perjury was not available at the original trial.

The accused, or the prosecutor used to apply to the Minister of Justice who would set up a commission consisting of three directors (i.e. heads of departments) of the Ministry of Justice and three 'magistrates' from the cour de cassasion to examine the new facts. Depending upon the advice of the commission, the Minister of Justice might recommend that the case be brought before the cur de cassation by means of a pourvois en revision'. The court might then base its decision on the evidence available or might instruct further inquiries (having the power to issue 'commissions rogatorres' to the police, etc.).

When the court granted the appeal it had a choice of action. It might reduce the earlier judgement and remit the case for re-trial. It the accused was convicted again he could not be sentenced more than the sentenced imposed at the first trial. Alternatively, the count had reduced the earlier judgement and terminated the proceedings without ordering a re-trial. The court adopted the later course if the accused was clearly innocent or if no criminal offence was committed or if a re-trial was impossible.
If the second course was adopted, the accused was liberated, any fire or damages paid by him would be reimbursed, the court decision was widely published in an attempt to restore his reputation, and he might be paid compensation from the public funds.

In sum, in French Pondicherry, there was no elaborate examination of witnesses in court. Whatever examination carried out was immediate. The judge heard the witnesses and put questions to them. Lawyers were not allowed to intervene or heckle or influence a witness while he was deposing in court. If the counsel had any questions he was required to reduce them in to writing and pass them on to the presiding officer who exercised discretion in deciding whether the questions were relevant or not. It was unthinkable in the continental system for any lawyer to cast aspersions on the character of witnesses. It was in this way that the presiding officer played a pivotal role in ascertaining the facts of the case. Needless to say, this procedure was pre-eminently responsible for quick disposal of criminal cases. In addition, the judgements were generally short and it depended upon the skill and capacity of the judge to write them without omitting the essentials.
The French code of Criminal Procedure permitted pre-trial detention when detention was the only means of protecting the evidence or preventing coercion or influencing the witnesses or when such determining is necessary in the interest of public order. This provision has since been modified by the introduction of a pre-detention procedure called control judiciary which gave greater discretion to the examining magistrates and provided for conditions release.