

PREFACE

This book is the third in a series of books on foreign civil procedure published by the Project on International Procedure of the School of Law of Columbia University. Books on civil procedure in Sweden and Italy were published recently; a book on civil procedure in Japan is in preparation.

The Project's studies on foreign civil procedure have several objectives. First, they provide an opportunity to become familiar with the procedural systems of other countries; the differences between common law and foreign systems of procedure are pervasive and proper understanding of foreign substantive law cannot be achieved without knowledge of foreign procedure. Second, they are designed to permit critical evaluation of domestic procedure in the light of foreign procedural institutions. Third, they should promote better understanding and easier acceptance of procedure in international tribunals, which in large part, is patterned on foreign systems of procedure. And finally, they should facilitate comprehension and appreciation of the culture and customs of foreign countries in general.

The basic structure of the three books on civil procedure is the same. Each endeavors to discuss the problems encountered in litigating a civil controversy in the chronological order in which they are most likely to arise. By proceeding in this fashion, a coherent picture is presented, and, at the same time, abstract categorizations cutting across normal developments in a lawsuit which impede proper understanding of foreign rules in their functional context are avoided. Since civil procedure, as all law, is a product of historical developments and since it cannot be understood without reference to the political structure within which it is to operate, the first chapter is devoted to a discussion of the history of the foreign country, its political organization, and the history of its civil procedure. Also included in that chapter are a description and an evaluation of authoritative sources of civil procedure. By way of

conclusion, each book describes the treatment extended to judgments rendered in foreign countries and domestic procedures of international cooperation in litigation. The practical importance of these subjects to foreign lawyers warrants their inclusion.

Each book is the product of co-operation between an American lawyer and a lawyer of the country whose procedure it describes. This form of collaboration was chosen to insure that the subject matter be presented in a form comprehensible to lawyers trained in the common law and that the content meet the standards of scholarship observed in the foreign country.

French civil procedure was selected for obvious reasons. Not only is it the system of procedure prevailing in one of the leading nations of the world, but it has also been an important part of France's cultural exports to many other countries of the world.

Dr. Weser and Professor Herzog commenced their work on the book in the fall of 1960. Because the preparation of this book required considerably more time than anticipated and Dr. Weser had to terminate her collaboration in the fall of 1962, it was impossible to adhere to the procedure followed in the preparation of the Project's other studies. Dr. Weser and Professor Herzog did collaborate on chapters 2, 4, 5, and 6, but Dr. Weser neither participated in the preparation of, nor is responsible for, any of the other chapters.

In 1962, Professor Herzog spent four months in France, working on the manuscript for this book. He acknowledges his particular gratitude for assistance willingly granted and information readily supplied to: the Honorable Judge Marc Ancel, *Conseiller* at the *Cour de Cassation*; Professor Henri Batiffol; the Honorable Judge Pierre Bellet, *Président de Chambre* at the *Cour d'Appel* in Paris; Professor René David; Me. René Després, *avoué* at the *Cour d'Appel* in Paris; Professor Christian Gavalda; Me. Fernand Jeantet, *avocat* at the *Cour d'Appel* in Paris; the Honorable Judge Louis Legorju, *Vice Président, Tribunal de Grande Instance* in Paris; Me. J. Lot, chief clerk, *Cour d'Appel* in Paris; the Honorable Mr. Robert Onéto, *Substitut* of the *Procureur de la République* in Paris; Professor Roger Perrot; Me. Jean Ponelle, *avoué* at the *Tribunal de Grande Instance* in Paris; Me. Pradon, *avocat* at the *Conseil d'Etat* and *Cour de Cassation*; Professor Henri Solus; and Me. Juliette Veillier-Duray, *avocat* at the *Cour d'Appel* in Paris. Special thanks are also due to Mrs. G. S. Koopman of The Hague, The Netherlands, who is mainly responsible for the typing of the manuscript.

The manuscript for this book was completed in June, 1965. During

its preparation, the French law of civil procedure was the subject of rather rapid changes. An effort has been made to take due account of these changes even when they affected chapters that had already been completed. After the manuscript had been completed, additional legislative changes occurred, including the promulgation of Décret No. 65-872 of October 13, 1965, and Décret No. 65-1006 of November 26, 1965. To the extent possible, these changes were taken into consideration in the correction of the printed proofs.

We are sincerely grateful to the Carnegie Corporation of New York which made the grant that permitted us to undertake the preparation of this book.

We also express our sincere gratitude to Andrew Cordier, Dean of the Columbia University School of International Affairs, who provided the funds that enabled us to publish this book in a form considerably more voluminous than anticipated, and to William C. Warren, Dean of the Columbia University School of Law, who was a moving force in the creation of the Project and through his benevolent supervision made light the burden of its administration.

The editor, finally, expresses his appreciation to Willis L. M. Reese, Charles Evans Hughes Professor of Law at Columbia University, for his kind and ready assistance.

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