

MEMORANDUM
UPON
THE PROMULGATION OF THE PARTS
OF THE CIVIL AND COMMERCIAL
CODE WHICH ARE COMPLETED

I.

The Commission of Codification have just completed the important part of the Civil and Commercial Law which deals with the Obligations and Specific Contracts. The last stage, namely the translation of the English Draft into Siamese, is reached. The Committee of Translation have completed their work for the General Part, including 387 sections; they have translated already the remaining part from section 388 to 1463 and have only to revise it, what shall require only a few months.

Then, the Commission of Codification have examined the question to know how shall the promulgation and publication of the Civil and Commercial Code be made, and, especially, if it would be advisable to promulgate without delay the General Part (1 to 367) of the present Draft.

The interest of the question is that this Part contains principles of law which really govern the whole civil and commercial

law. Sections 1 to 387 deal first with the rules for application of law, construction of documents or computation of delays, which are urgently needed by the Courts in any matter whatsoever. Besides, they give the rules for the voidity of contracts and creation of obligations, the joint obligations, the transfer of obligations, the performance and compensation for non-performance, the rights of the creditors, the prescription of rights, etc.. One sees by a mere enumeration of these matters how important they are in the Siamese legislation. One can then say that these 387 sections will be the key of the Siamese Civil Law in the future. I dare say that any Judge ought to know them completely, together with their connections and consequences, and that this would be sufficient to make him ipso facto an excellent lawyer: whilst he can hardly keep or be requested to keep in his memory all the rules for specific contracts, for which he can refer to his book in each particular case.

This importance of sections 1 to 387 is such as they will also be of use for the proper construction of all provisions of Civil or Commercial Law which are now specified in old laws and not yet codified; and of course for the good application of recent laws like the Law on Partnerships and

Companies, the Law on Associations, the Law on Nationality, etc., which have been framed with a careful regard to the general principles.

Then, one can hope that the promulgation, as soon as possible, of sections 1 to 387 would help greatly the Courts and constitute for them a welcome guidance. On the other part, one can say that nothing in these general principles is contrary to the present practices of the Courts in civil law: sections 1 to 387 have merely codified many rules the spirit of which is daily applied by the Courts, but which are written nowhere in the present conditions of legislation; and of course the Code Commissioners have done their best to try and explain as clearly as possible these fundamental principles of law.

To publish at once sections 1 to 387 would probably be welcomed by the Judges and lawyers of this country. It must not be lost of view also that this key of the civil law is, of course, the most difficult part of it. A delay is to be granted between the date of promulgation and the date of enforcement of the Codes, so that the Judges may have time to learn, and be acquainted with, their provisions: so long could this delay be for sections 1 to 387, so much the better.

To support the policy to promulgate at

once these sections, one can add that the completion of the work of codification calls always the attention of the foreign Powers and that any stage reached to is favourably noted. Any promulgation shortens the period of extraterritoriality and is an argument against its maintenance. Moreover, the new Treaty with the United States of America specifies a "reasonable time" from the promulgation of the Codes during which observations may be made by this Power for modifications in the same: as soon as a promulgation is made, as soon shall run this delay.

At last, a practical argument is that the very delicate work of the Committee of Translation would be highly facilitated if a promulgation of the General Part of the Code would secure a final selection of the Siamese wording for so many general words which are used therein, and will be henceforth found again and again in the following Books of the Civil and Commercial Code.

However, may any objections be raised against a separate and immediate publication of sections 1 to 387, without waiting for the remaining part of the matter of Obligations ?

One may object that there will be a very short delay - a few months - between the two promulgations, and that some patience more might be commendable. And also

that the man in the street, who has no knowledge of the scheme, extent and importance of a Civil and Commercial Code, could be struck unfavourably by a publication of some four hundred sections only, because he is prepared to be presented with a book of some several thousand. This argument comes to say that to promulgate the Draft of Obligations as a whole would be more impressive and would not give room to misinterpretations as to the importance of the work of codification: a point that the Commission of Codification have the duty not to neglect, not for their own sake, but because they are anxious to secure the best regard in this country and outside for the policy of the Government.

II.

The above considerations show that, when we examine the present Draft on Obligations in order to see if it has better to be published as a whole, or in two successive parts, there are really arguments for both sides.

But let us see if an examination of the general scheme which has been adopted in the work of Codification is not likely to help us to find the proper decision.

I beg the permission to remind that, from the beginning, it has been admitted that the Civil and Commercial Law would be

included in one and the same Code, named the "Civil and Commercial Code". And that, on account of the importance of the work, it was never contemplated to wait and publish the whole at the same time, but, on the contrary, to promulgate the different parts separately and as soon as ready.

One knows that, according to the Treaties which have been signed with some Powers, the legislation in civil law is intended to be included in a "Civil and Commercial Code". The Treaties do not know any division of this Code into a Code of Obligations and a Civil Code dealing with other matters. And it is certainly more consistent with the wording which has been used in the Treaties to speak only of a "Civil and Commercial Code".

If we look for the precedences in the other countries we see that everywhere - except in Switzerland - there is one Civil Code only.

The intention of the Commission of Codification has been to do the same as everywhere. When Mr. Padoux did submit his scheme for the Codification in his Memorandum dated 20th. July 1909, he did propose to draft and probably publish first a Part of Obligations in order to secure a quicker performance of the work. But he said that, when the matters of civil law other than the obligations would

be completed, "we would amalgamate it with the Part on Obligations already enacted and issue the whole as a Civil and Commercial Code". In his scheme, the Part on Obligations "would become Book III of the Civil and Commercial Code". And section 1 of the present Draft reads: "This Law shall be called the Civil and Commercial Code, Book on Obligations".

Twelve years have elapsed. The principle remains the same: to have one Civil and Commercial Code only. But we have got experience of the work; the Part on Obligations is completed; Drafts have been made and printed for the other Parts, and some of them already revised with the Siamese Commissioners. We have consequently a more accurate and experimental knowledge of the work, and we know more exactly the influence of the rules included in a Part on the rules to be adopted in other Parts. We are then of opinion that the whole Civil and Commercial Code could be finally divided into several Books and presented as follows:

BOOK I. - General Provisions of Civil and Commercial Law. (This includes sections 1 to 39 of the present Draft on Obligations: definitions, rules for application of law, construction of documents, periods of time. All these provisions, as a fact, far from

concerning only Obligations, govern the whole matter of civil and commercial law: one can say that in the future they shall govern even laws which shall be issued out of the Civil and Commercial Code; they have better to be placed separately in a special Book.)

BOOK II. - Obligations (sections 40 to 387).

BOOK III. - Specific Contracts (sections 388 to 1463).

BOOK IV. - Things. (A Draft has been printed in 1919 after revision with the Siamese Commissioners.)

BOOK V. - Persons. (A Draft has been printed in 1919 after partial revision.)

BOOK VI. - Family. (including Marriage, a matter which is purely a Siamese one, and for which a preliminary Draft has been printed as soon as 1912).

BOOK VII. - Inheritance. (A preliminary Draft has been printed as soon as 1912.)

Can this order be objected to? Is it necessary to arrange the matters of Civil and Commercial Code in the same order as in the Code Napoleon (namely: Persons, Things, Inheritance, Obligations)? We see no material reason for it, and this order has never

been adopted by the other Codes as an inevitable course:

In Switzerland, the Civil Code was promulgated as the beginning of the Codification, in this order: Persons, Inheritance, Things; the Code of Obligations was promulgated afterwards;

In Germany, Books I and II (General) contain the greatest part of the provisions which are in our General Provisions of the beginning of the Draft on Obligations (how obligations arise, periods of time, prescription, self-help, performance of obligations, transfer of obligations, joint obligations); Specific Contracts comes just after; Things are dealt with afterwards; Family and Inheritance by the end;

In Japan, after some general provisions dealing with the same matter as our provisions of the beginning concerning intention, validity of contracts, periods of time, prescription, etc., the order is: Things (real rights), Obligations and Specific Contracts, Persons, Inheritance.

This shows that the order of the Code Napoleon is far from being inevitable, and that each country has, in fact, followed the order which was the most convenient owing to its own practices or perhaps to the manner and delay in which the work of codification has been conducted there.

If the proposal to issue the Civil and Commercial Code with the above divisions and order was finally adopted, there would be no objection to promulgate each Book separately and successively, as soon as they are ready.

This was made in France. What we call the Code Napoleon was really examined and passed by the Legislative Council of the time from 1800 to 1804 in thirty six separate laws: by the end of this work only, a final law 21st. March 1804 did specify that the thirty six laws would be amalgamated in one Code to be named the French Civil Code.

This was really the first experience of building a Civil Code, and perhaps the legislators of the time, when beginning their work, did not foresee exactly its extent. Now, as experience allows us to know exactly what we are contemplating, namely a Civil and Commercial Code, we can make the reverse, and proclaim from the beginning the existence of such a Code, the different parts of which are to be issued successively.

If so, I would recommend the following policy:

a) to draft a Preamble proclaiming and explaining once for all that the Government issues a Civil and Commercial Code in several divisions (see Annex hereafter);

b) to place after the Preamble, as Preliminary and out of all the Books, the -----

sections 1 which would read: "This Law shall be called the Civil and Commercial Code"; 2: "It shall come into force on the....."; and 3: "On and from the day of operation of this Code, all other laws and regulations in so far as they deal with matters governed by this Code or are in-consistent with its provisions, shall be repealed". If we do so, the preliminary sections shall govern once for all the whole publication of the Civil and Commercial Code, and the Books to be published afterwards would have only to be added after the previous ones, with a short Preamble intended to specify only their particular date of enforcement;

c) to issue at once Book I (General Provisions of Civil and Commercial Law) including sections 4 to 39 in 4 Titles instead of 5 Titles, on account of sections 1, 2, 3 being taken as Preliminary; and Book II (Obligations) including sections 40 to 387;

d) Book III (Specific Contracts) including sections 388 to 1463, would be issued within a few months;

e) Books IV to VII would follow naturally and successively afterwards, without requiring anything else than a very short Preamble specifying their respective date of enforcement;

f) as a matter of policy, it would perhaps be commendable, owing to the importance

of the matter and the attention of the foreign Powers in this question, to deliver to the papers a short "communiqué". at the time of the first promulgation, to explain that the Civil and Commercial Code is forwarded enough to be promulgated from now, Books after Books, successively and at different intervals.

This policy seems to grant us the benefits of an immediate promulgation of the parts of the Code which are ready, and to avoid the objection against such a separate promulgation. The consequence is that we would then have really in Siam a Civil and Commercial Code in course of publication and enforcement, and I am inclined to believe that this realization would be impressive upon the foreign Powers who are interested to follow the work of codification in our country.

19 th. December 1921.