



Second Study Commission
Civil law and procedure

Meeting in San Juan (Puerto Rico), 13-16 October 1997

Conclusions

THE RIGHT OF EVIDENCE IN CIVIL PROCEDURE

The subject of the work of the 2nd Commission was “The law of evidence in civil procedure”. 27 written reports had been submitted by the members of the commission for the preparation of the general report, 20 of these reports were taken into consideration. The delegates from 35 nations were present. The general report by the President was adopted.

The discussion in the Commission covered the following matters in particular:

Judicial interventionism in process.

The function of the judge in taking evidence.

The differences between oral and written evidence .

The binding of the judge by “legal evidence”.

The impartiality of experts as members of the court or as witnesses.

The need for penal sanctions in civil procedure.

The Commission unanimously adopted the following resolutions:

1. It is the function of the judge to guarantee a fair hearing to parties in accordance with the rules of evidence; it is also his function to assist parties in every way permitted by law to obtain such evidence as is necessary for the proper presentation of the case and to prevent unnecessary delays.
2. It is legitimate for the judge to impose sanctions on parties or witnesses who refuse to give evidence or to produce documents.
3. It is the main function of the judge to decide a case according to his unfettered consideration of the evidence presented to him, whatever the differences between the Civil Law countries and the Common Law countries, the preference for oral or written evidence and within any limits imposed by the hierarchy instituted between modes of proof.
4. Whether the expert is appointed by the court, or sits with the court, or has a vote, a minimum standard of impartiality should be guaranteed.