

# HISTORY OF THE CODES OF IOWA LAW

## I

### TERRITORIAL CODES

#### INTRODUCTION

A study of legislation during the middle period in the history of the United States reveals a general movement for the codification of law, led in New York by Mr. David Dudley Field.<sup>1</sup> This movement, moreover, bore early fruit in Iowa where the results, in at least one instance, were so distinguished as to serve as a model for other States.

Since the establishment of the Territory in 1838 there have appeared in Iowa six official codes<sup>2</sup> and four private compilations<sup>3</sup> of the laws. Unfortunately those who compiled the various codes have left scarcely any first-hand

<sup>1</sup> For a discussion of the codification of law, the following references may be consulted: *Codification in The American Law Review*, Vol. XX, pp. 1, 315; *Codes and the Arrangement of the Law in The American Law Review*, Vol. V, p. 1; and Field's *The Codes of New York and Codification in General in The Albany Law Journal*, Vol. XIX, p. 192.

<sup>2</sup> The six official codes are: *The Statute Laws of the Territory of Iowa, 1838-1839*, or *The Old Blue Book*; *Revised Statutes of the Territory of Iowa, 1842-1843*, or *The Blue Book*; *The Code of 1851*; *Revision of 1860*; *The Code of 1873*; and *Code of 1897*.

In 1860 there was published a separate volume entitled *Code of Civil and Criminal Practice*. It was desired to place before the public the code of civil and criminal practice as soon as possible; and so the book referred to was published in May, 1860, and later incorporated in the complete edition of the *Revision of 1860* which came out in the following September. The volume was published as a private enterprise.

There are two supplements to the *Code of 1897*, one published in 1902 and the other in 1907.

<sup>3</sup> The four private compilations are: Stacy's *The Code of Civil Procedure*, Des Moines, 1878; Overton's *The Annotated Code of Civil Practice for Wisconsin and Iowa*, Chicago, 1875; Miller's *Revised and Annotated Code of Iowa*, Des Moines, 1880; McClain's *Annotated Statutes*, Chicago, 1880.



accounts of their work. And so, the story of these books must be gathered from widely scattered sources, such as official documents, magazine articles, and contemporary newspapers. The secondary sources, moreover, have been found to be more or less unsatisfactory and unreliable.

In the broadest sense the laws in force in Iowa include the Constitution of the United States, the acts of Congress and the treaties of the United States, the Constitution of Iowa, the acts and resolutions of the General Assembly, the decisions of the courts, and the Common Law rules prior to 1707 and not locally inapplicable.<sup>4</sup> To gather from these sources the laws, to coördinate and classify them, and to publish the results constitute the task of codification. In Iowa, however, no attempts have been made to codify *all* the law in force in the State. It is worthy of note that New York did make such an attempt at an early date but abandoned the undertaking.<sup>5</sup>

A code, to be binding as a body of law, must be enacted as such by legislative authority. It differs from an ordinary compilation of legislative acts, such as the session laws, in that it deals with general law only, and does not include joint resolutions or those laws which are purely

Revised editions of Miller's work were gotten out in 1884, 1888, and 1890.

A supplement to Judge McClain's work appeared in 1884. In 1888 he published the *Annotated Code and Statutes*. In 1892 a supplement to the latter work was published.

For a list of Iowa codes, both official and private, see *Check List of the Publications of the State of Iowa*, 1904, p. 34.

<sup>4</sup> See *Iowa Historical Lectures*, 1892, p. 84. In 1840 the Territorial legislature enacted a law which provided that none of the statutes of Great Britain should be in effect in Iowa. The court holds that this "does not extend to the statutes of *England*", but "was intended to prescribe the event of the union of the crown of England with that of Scotland, as the period at which the statutes of England should cease to operate upon our law".—*O'Ferrall v. Simplot*, 4 Iowa 381. The quotations are from the syllabus. See *Laws of the Territory of Iowa*, 1840 (Ex. Session), Chap. 29, Sec. 8, p. 20.

<sup>5</sup> Preface to the *Revision of 1860*, p. iv.



private or local in their nature. This distinction is admirably brought out in a Georgia case, where the court holds that "there is quite a difference between a code of laws for a state and a compilation in revised form of its statutes. The code is broader in its scope, and more comprehensive in its purposes. Its general object is to embody as near as practicable all the law of a state, from whatever source derived. When properly adopted by the law-making power of a state, it has the same effect as one general act of the legislature containing all the provisions embraced in the volume that is thus adopted. It is more than evidentiary of the law. It is the law itself."<sup>6</sup> A code, then, is "a general collection or compilation of laws by public authority. The word is used frequently in the United States to signify a concise, comprehensive, systematic reënactment of the law, deduced from both its principal sources, the pre-existing statutes, and the adjudications of courts, as distinguished from compilations of statute law only."<sup>7</sup>

Two methods have been employed in the making of the codes in Iowa. During the Territorial period the legislature itself attempted to do the work without the aid of men learned in the law; but the results of this method were far from satisfactory. After the Territory became a State, the work of codification was invariably entrusted to a board of Commissioners, who prepared a code for adoption or rejection, in whole or in part, by the General Assembly.

Although there were codes so-called in the several jurisdictions<sup>8</sup> to which the Iowa country was subjected prior to

<sup>6</sup> Quoted from the article on *Code* in the *Cyclopedia of Law and Procedure*, 7 Cyc. 269. The case is reported in 104 Georgia 831.

<sup>7</sup> From the article on *Code* in *The American and English Encyclopedia of Law*, (2nd edition), Vol. VI, p. 173.

<sup>8</sup> The jurisdictions were: District of Louisiana, 1804-1805; Territory of Louisiana, 1805-1812; Territory of Missouri, 1812-1821; Territory of Michigan, 1834-1836; and the Original Territory of Wisconsin, 1836-1838.



1838, none of these early compilations<sup>9</sup> will be considered in this paper for obvious reasons. Nor will any notice be taken in this connection of the extra-legal codes or constitutions adopted by the early settlers in their Claim Associations,<sup>10</sup> or the by-laws subscribed to by the Dubuque miners in 1830.<sup>11</sup>

The first publication of Iowa laws which bears any semblance to a code is *The Statute Laws of the Territory of Iowa*, 1838-1839, known to some writers as *The Old Blue Book*.<sup>12</sup> This was followed in 1843, by a more extensive book entitled the *Revised Statutes of the Territory of Iowa*, 1842-1843, and popularly known as *The Blue Book*.<sup>13</sup> These volumes, which belong to the Territorial period, are not codes in any strict sense of the term. And yet, both have some resemblance to a systematic compilation in the arrangement of matter, which does not follow the chronological order of the acts as approved; both served as a guide to the law of the Territory; and both may be considered as the forerunners to the later real codes of the State.

The first suggestion looking toward a codification of the

<sup>9</sup> For example, in Michigan there had been published prior to 1834 three so-called codes: *The Woodward Code*, 1805, published at Washington, D. C.; the *Cass Code*, 1816, published at Detroit, Mich.; and the *Code of 1820*. These compilations are reprinted in Vol. I of the *Laws of the Territory of Michigan* as published in 1871, p. xiii.

<sup>10</sup> See Shambaugh's *Constitution and Records of the Claim Association of Johnson County*; also Shambaugh's *Frontier Land Clubs or Claim Associations* in the *Annual Report of the American Historical Association for 1900*, Vol. I, pp. 67-84.

<sup>11</sup> See Parish's *The Langworthys of Early Dubuque and Their Contributions to Local History* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VIII, p. 317.

<sup>12</sup> Cole's *Historical Bibliography of the Statute Law of Iowa* in *The Law Bulletin*, (State University of Iowa), No. 2, note on p. 40. He says "This vol. is the 'Old Blue Book' having been bound with blue paper sides."

<sup>13</sup> Cole's *Historical Bibliography of the Statute Law of Iowa* in *The Law Bulletin*, (State University of Iowa), No. 2, note on p. 41.



laws of Iowa was made by Governor Henry Dodge in his message to the Legislative Assembly in 1837, where he says:—

By the organic law of Congress, the laws of the late Territory of Michigan are in force until altered, modified, or repealed. There has been a great accession of population to this Territory within the last four years, from every part of the United States: the state and condition of the people has been greatly changed, and the existing laws now in force (many of them) are not suited to the habits and wants of the citizens of this territory. I recommend for your consideration, at an early day of your session, the propriety of selecting three or more competent persons to report a code of laws to be submitted to the action of the Legislative Assembly during their present session.<sup>14</sup>

A leading newspaper of the time, after mentioning the convening of the legislature, remarks editorially:—

There is one measure to be acted on, which all concede to be of paramount importance — we mean the revision of our present, or the adoption of an entire new code of laws. Something must be done on this subject, or we shall have to halt. It is time the people should know what laws are in existence in our Territory, and what are not. This opportunity, we hope, will soon be afforded them.<sup>15</sup>

Less than a year later, on July 4, 1838, that part of Wisconsin Territory lying west of the Mississippi River was erected into the Territory of Iowa. By the act which created this Territory it was provided that “the existing laws of the Territory of Wisconsin shall be extended over said territory, so far as the same be not incompatible with the provisions of this act, subject, nevertheless, to be altered, modified, or repealed by the governor and legislative assembly of the said territory of Iowa.”<sup>16</sup>

<sup>14</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 12.

<sup>15</sup> *Wisconsin Territorial Gazette and Burlington Advertiser*, Vol. I, No. 18, Thursday, November 11, 1837.

<sup>16</sup> Section 12 of the act of Congress, approved June 12, 1838, “to divide the Territory of Wisconsin, and establish the Territorial Government of Iowa.”



Although the legislature of the original Territory of Wisconsin had by a joint resolution provided for the printing of a compilation of the laws in force in the Territory,<sup>17</sup> the first Legislative Assembly of the Territory of Iowa proceeded to enact a great many new laws which finally took the form of a volume entitled *The Statute Laws of the Territory of Iowa, 1838-1839*.

THE OLD BLUE BOOK

The first Territorial legislature met on November 12, 1838, at Burlington. On this same day Governor Robert Lucas, in a lengthy message outlining the needs of the new Territory, strongly urged the adoption of a code of laws in the following terms:—

The compilation and enactment of a complete Code of laws, particularly adapted to our situation and interest, would require more time and deliberation, than is allotted to the Legislative Assembly during its session. And, indeed, experience has taught us, that it is impracticable to digest, report, and enact a complete code of laws during the session of a Legislative body.

I would therefore suggest for your consideration, as a subject of the greatest importance to the future prosperity of the Territory, the appointment of a committee not to exceed three persons, of known legal experience and weight of character, to digest and prepare a complete code of laws during the recess of the Legislature, and to report them for consideration and enactment at the ensuing session. By pursuing this method, in the course of two years we will be released from the ambiguity of existing laws, and our system of jurisprudence will be established upon a firm foundation, peculiarly adapted to the situation, interests, habits, and wants of our citizens.<sup>18</sup>

<sup>17</sup> *Laws of Wisconsin, 1836-1838*, Joint Resolutions, Nos. 11 and 15, pp. 524, 526.

<sup>18</sup> Shambaugh's *Executive Journal of Iowa, 1838-1841*, p. 55; Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 89; *Council Journal, Territory of Iowa, 1838-1839*, p. 12; and *Journal of the House of Representatives, Territory of Iowa, 1838-1839*, p. 11.



The suggestion of Governor Lucas did not seem to meet with the hearty approval of the legislature. In the House, Mr. James Brierly of Lee County offered a resolution calling for the appointment of a committee "to draft and revise a code of laws for the Territory of Iowa";<sup>19</sup> but on the motion of Mr. James W. Grimes, the resolution was laid upon the table, from which it seems never to have been taken.<sup>20</sup>

At the outset the two houses of the legislature pursued a different course of action in reference to the making of a code. In the journal of the House of Representatives it is recorded that on November 14, 1838, Mr. Grimes of the Judiciary Committee, offered the following resolution, which was adopted:

That the Judges of the Supreme Court, be requested to present to this House during the present session, for its action upon the same, such bills for this Territory as they should deem necessary for adoption.<sup>21</sup>

The Council, on the other hand, simply referred that part of the message of Governor Lucas which related to the appointment of a committee to draft and prepare a code of laws to the Judiciary Committee,<sup>22</sup> which was composed of Messrs. Stephen Hempstead, Jonathan W. Parker, E. A. M. Swazy, Charles Whittlesey, and Arthur Inghram.<sup>23</sup>

On November 21, 1838, both houses adopted a joint resolution, similar to the House resolution of November 14th, requesting the Judges of the Supreme Court "to furnish this Legislative Assembly, during its present session, with

<sup>19</sup> *House Journal*, Territory of Iowa, 1838-1839, p. 21.

<sup>20</sup> *House Journal*, Territory of Iowa, 1838-1839, p. 21.

<sup>21</sup> *House Journal*, Territory of Iowa, 1838-1839, p. 20.

<sup>22</sup> *Council Journal*, Territory of Iowa, 1838-1839, p. 40.

<sup>23</sup> *Council Journal*, Territory of Iowa, 1838-1839, p. 23. Messrs. Charles Whittlesey and Arthur Inghram were added later in the session.



such bills, as will, in their opinion, form a proper code of jurisprudence for Iowa, and regulate the practice of the courts thereof."<sup>24</sup>

Previous to the adoption of this resolution, however, copies of several laws, covering various subjects, were submitted to the legislature by Judges Charles Mason, T. S. Wilson, and Joseph Williams,<sup>25</sup> and were enacted into law. In fact, many of the most important laws passed at this first session of the Legislative Assembly were penned by Judge Mason, who was at that time the Chief Justice of the Supreme Court.<sup>26</sup> The resolution above referred to was looked upon as an act of employment, and the question of the compensation of the Judges in framing the laws gave rise to a complex legislative controversy.<sup>27</sup>

The question of who should print the laws was the next question to be settled. Two firms had champions in both houses. James G. Edwards of Burlington had printed the laws of Wisconsin Territory the previous year, and Mr. Grimes, chairman of the Judiciary Committee in the House, was strongly in his favor.<sup>28</sup> But it appears that on November 27, 1838, a joint resolution was approved, providing "that Russell and Reeves, of Du Buque, be employed to print the Laws passed at the present session on the same terms, [that is, the same prices as were paid to the printers of Congress for such work] and that the said Russell and Reeves be required to enter into bonds, with good and suf-

<sup>24</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 517, Joint Resolution, No. 7, approved January 4, 1839.

<sup>25</sup> *House Journal, Territory of Iowa, 1838-1839*, p. 74.

<sup>26</sup> For a paper on Chief Justice Mason see McClain's *Charles Mason — Iowa's First Jurist* in the *Annals of Iowa*, 3rd Series, Vol. IV, p. 595.

<sup>27</sup> *House Journal, Territory of Iowa, 1838-1839*, pp. 129, 130, 134, 139, 142, and 144. The question was kept alive during a considerable part of the session.

<sup>28</sup> *House Journal, Territory of Iowa, 1838-1839*, p. 36.



ficient security, to the Secretary of the Territory, in the sum of five thousand dollars, to have the same ready for delivery on the first day of May, A. D. 1839."<sup>29</sup>

The act, however, which authorized the publication of the laws of 1838-1839 was approved January 21, 1839.<sup>30</sup> By its provisions the Territorial Secretary was directed to furnish the Territorial printer with a true copy of the acts and joint resolutions passed at that session of the legislature; and in addition he was required "to make an index and marginal notes" to the same and to furnish these to the printer along with the laws, "to superintend the printing, in such manner as he may conceive most conducive to the public good", and to certify that the laws were correct according to the enrolled bills in his office.<sup>31</sup> Furthermore the act stipulates that "there shall be prefixed to the volume . . . a complete table of contents" and various documents.

As stated above, *The Statute Laws of the Territory of Iowa, 1838-1839*, do not in the strict sense of the term constitute a code of laws. It would be more proper to refer to them simply as the session laws of 1838-1839. But the arrangement of the statutes under various headings, their publication in alphabetical order, and the scope of the subjects included give to the work something more than the appearance merely of a code. Containing as it did the various important documents, the volume served the purpose of a code rather than a collection of acts and may be properly regarded as a forerunner of later compilations.

*The Statute Laws of the Territory of Iowa, 1838-1839*, contains five hundred and ninety-eight pages. Two thou-

<sup>29</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 515.

<sup>30</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 321.

<sup>31</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 322.



sand copies were ordered to be printed and put up in half binding,<sup>32</sup> the covers of which were a pale blue cardboard — from which it took the name of *The Old Blue Book*. The title page in full reads as follows:—

THE STATUTE LAWS  
OF THE  
TERRITORY OF IOWA,  
ENACTED AT THE FIRST SESSION OF THE LEGISLATIVE ASSEMBLY  
OF SAID TERRITORY, HELD AT BURLINGTON, A. D. 1838-'39.

PUBLISHED BY AUTHORITY.

DU BUQUE:  
RUSSELL AND REEVES, PRINTERS  
1839.

The Secretary's certificate, required by the act authorizing the publishing of the volume, stating that the printed pages were correct copies of the enrolled bills, is dated July 23, 1839.<sup>33</sup> The joint resolution provided that the book should be ready for delivery on the first day of May. Thus it is evident that there was a considerable delay in completing the work, a fact which caused trouble when it came time to pay for the printing.

The first document in this compilation is the "Declaration of Independence", which is followed by the "Constitution of the United States", "The Ordinance of 1787", and "The Organic Law of Iowa". In addition to these, in an appendix at the close of the book, may be found an act of Congress concerning the Naturalization of Aliens, of May 24, 1828, and the "Articles of Confederation."<sup>34</sup>

The acts of the Territorial legislature are grouped under

<sup>32</sup> *The Statute Laws of the Territory of Iowa*, 1838-1839, p. 517.

<sup>33</sup> *The Statute Laws of the Territory of Iowa*, 1838-1839, reverse of title page.

<sup>34</sup> *The Statute Laws of the Territory of Iowa*, 1838-1839, p. 522.



seventy-four headings, which are arranged alphabetically, commencing with "Abatement" and ending with "Worshipping Congregations". The statutes themselves compare favorably with those of later assemblies. They are clear and free from ambiguity; and though some may be criticised as to arrangement, the majority are of a high order, both from a literary and a legal standpoint.

The headings of the various sections are sometimes misleading. For example, under "Mechanic"<sup>35</sup> the law refers to liens and the methods of foreclosing the same; under "Legislative Assembly"<sup>36</sup> the act is one "to district the Territory of Iowa into electoral districts, and to apportion the Representatives of each"; and under "Burlington"<sup>37</sup> appears "An Act to improve the Police of the City of Burlington."

In the arrangement of the contents, laws of a general nature are not separated from those of a special or private character. And so the book contains a number of acts granting ferry privileges and regulating their operation, acts establishing roads,<sup>38</sup> and acts authorizing individuals to erect mill dams. There are also eleven acts which refer to counties and to county boundaries.<sup>39</sup> One statute changes the old county of Slaughter into the Washington County of to-day;<sup>40</sup> and another provides that "so soon as the place shall be selected" for a seat of government, it should be called "Iowa City".<sup>41</sup> A considerable number of

<sup>35</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 327.

<sup>36</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 324.

<sup>37</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 71.

<sup>38</sup> There were six acts relating to Roads.— *The Statute Laws of the Territory of Iowa, 1838-1839*, pp. 427-435.

<sup>39</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, pp. 89-107.

<sup>40</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 100.

<sup>41</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 437.



laws are headed "Incorporations",<sup>42</sup> since in the absence of a general incorporation law every organization that desired corporate life had to secure a special charter from the legislature. The laws relating to county organization and county officers are not grouped into one division, but are scattered throughout the book.

Many of the statutes printed in *The Old Blue Book* are naturally of interest only from an historical standpoint. There is a law concerning "Blacks and Mulattoes"<sup>43</sup> which seems very harsh and unjust to-day, but which in 1839 expressed the sentiment of a majority of the inhabitants of Iowa.<sup>44</sup> No black or mulatto was allowed to reside or settle in the Territory unless he could produce a certificate under seal showing his freedom, and give a bond of five hundred dollars conditioned on his good behavior, and that such black or mulatto would not become a charge on the county. A conviction of any crime or misdemeanor acted as a forfeiture of such bond. Moreover, if the negro or mulatto failed to provide such security, it became the duty of the county commissioners to hire him out to the highest bidder for cash.<sup>45</sup>

Another law of interest is the one in regard to seals, as it shows the tendency of the early legislators to break away from some of the restrictions of the Common Law.<sup>46</sup> The law now is, of course, much more liberal than then; but the act referred to was more liberal than the Common Law, since it provided "That any instrument, to which the per-

<sup>42</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 227. There was a total of fourteen acts headed "Incorporations".

<sup>43</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 65.

<sup>44</sup> Many of the early settlers were from the South and naturally had the southern attitude toward the colored race.

<sup>45</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 66.

<sup>46</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 435.



son making the same shall affix any device, or scrawl, by way of seal, shall be adjudged and held to be of the same force and obligation as if it were actually sealed", and further, "All instruments shall be considered, and adjudged, as sealed instruments whenever the aforesaid scrawl or device, is attached by the mark thereof, although the word 'seal' is not mentioned in the body of the instrument."<sup>47</sup>

In the act defining crimes and punishments is found the interesting provision that "any person who shall steal any hog, shoat, or pig, or mark or alter the mark of any hog, shoat, or pig, with an intention of stealing the same, for every such offence, upon being thereof duly convicted, shall be fined in any sum not exceeding one hundred dollars, and moreover shall be imprisoned for a term not exceeding five years"<sup>48</sup> The crime of horse stealing, being of a much graver nature, was punished by a prison sentence of ten years.<sup>49</sup>

The code of criminal jurisprudence, which covers thirty pages, is to be found under the heading "Courts".<sup>50</sup> The act is divided into ten divisions, graded according to the enormity of the crime. One noticeable feature is the statutory definitions of murder, manslaughter, and the various crimes.<sup>51</sup> As a matter of fact, the crime of murder is not as fully defined in the *Code of 1897* as in the first code of the Territory. *The Old Blue Book*, however, has nothing to say of the greatest of all crimes, namely, treason.

The militia is very elaborately organized into three di-

<sup>47</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 435.

<sup>48</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 150.

<sup>49</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 149.

<sup>50</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 142.

<sup>51</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 142.



visions of not less than two brigades each.<sup>52</sup> Such an organization seems to have given considerable trouble, as the militia law was continually being changed. The population of Iowa in 1838 was 22,859,<sup>53</sup> and the minimum organization called for six brigades; while to-day with a population of over two million the militia is organized into one brigade. The Adjutant General was to keep extensive records and was allowed "one hundred and fifty dollars, annually, for book stationery, and in full for all his services as such".<sup>54</sup>

The last statute in the book is headed "Worshiping Congregations", which is an act "to preserve good order in all worshiping congregations in this Territory."<sup>55</sup> The act makes it a crime, triable by jury, to use profane or vulgar language, or sell liquors within a certain distance of worshiping assemblages.

Under many of the acts of a private nature are to be found notes from the pen of Governor Lucas, which usually declare that so far as the law interferes "with private rights, or the property of the United States, it will be considered void", but in other respects it is valid.<sup>56</sup> These notes closely resembled judicial opinions and as such were clearly superfluous.

Throughout the volume there are complete marginal notes of an exceptionally high character. These are of great aid to the student who seeks a concise, correct statement of the law. The statutes are clothed in such simple

<sup>52</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 329.

<sup>53</sup> *House Journal, Territory of Iowa, 1840-1841*, p. 316.

<sup>54</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 334.

<sup>55</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 513.

<sup>56</sup> The writing of these opinions by Governor Lucas raised considerable opposition in the first session of the Legislative Assembly.—See Parish's *Robert Lucas*, p. 211.



and clear language that the man who is unacquainted with the law can easily understand them. At that time annotations had not made their appearance in compilations of Iowa laws; indeed, there were practically none to be made in connection with these Iowa statutes as the Supreme Court had only been in existence for a few months.<sup>57</sup> Following the acts of the Legislative Assembly are the joint resolutions — twelve in number.

As stated above, there was considerable delay in the publication of the laws. This was very provoking to Governor Lucas, and in his second annual message he gives a complete account of the reasons for their tardy appearance, in which he seeks to throw the blame on Secretary Wm. B. Conway, who had prepared the book for publication.<sup>58</sup> In speaking of the delay he says:—

They have just been received at this city, within a few days of six months after the time specified in the obligation. On examining the printed volume, delivered to me by the Secretary of the Territory, I find it contains his official certificate, dated the 23d of July, A. D. 1839, (nearly three months after the time the laws should have been ready for delivery) certifying that he had compared the pages with the "engrossed bills" deposited in his office, and that they contained true and correct copies. (The Secretary, I suppose meant the enrolled bills, as no "engrossed bills" are ever filed in the Secretary's office as laws.) In this certificate the Secretary has been in error in one particular at least; for, in the first section of the act providing for and regulating general elections, in the Territory, I discover a very important interpolation in the printed

<sup>57</sup> There were only 191 cases tried during the Territorial period. Chief Justice Mason wrote 166 of the opinions, one of the most important of which was the case of Ralph, a colored man, which is reported in Bradford's *Reports of the Decisions of the Supreme Court of Iowa*, 1840, p. 3. This case is also reported in *Morris*, p. 1. See McClain's *Charles Mason — Iowa's First Jurist* in the *Annals of Iowa*, 3rd Series, Vol. IV, p. 598, and also Parish's *An Early Fugitive Slave Case West of the Mississippi River* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. VI, p. 88.

<sup>58</sup> *The Statute Laws of the Territory of Iowa, 1838-1839*, p. 321.



copy, that changes materially the meaning of the law. The original enrolled bill signed by the presiding officers of both branches of the Legislative Assembly, approved by the Executive, and deposited in the Secretary's office, in the clause relating to the election of Delegate to Congress, reads as follows: "An election for Delegate to Congress, for members of the council, and county recorder, shall take place on the first Monday in August next — and forty, and on the same day in every second year thereafter." The printed copy is made to read "An election for Delegate to Congress, for members to the council, and county Recorder, shall take place on the first Monday of August, *Eighteen hundred* and forty, and on the same day in every second year thereafter." Thus we find the word "*next*" where it occurs after the word "*August*" in the original enrolled bill omitted, and the words "*Eighteen hundred*", that are not in the original roll interpolated in the printed copy. I have also examined the appendix with care, and find under the head *Naturalization of aliens* An act of Congress entitled "an Act to amend an Act concerning Naturalization," approved 24th May, 1828, printed which is the only act on this subject that I could find in the volume. The acts of the Legislative Assembly require the publication, in an appendix to the laws of the Territory, all acts of Congress now in force, relative to the naturalization of aliens, which would have included a general law on that subject, approved 14th April 1802, an additional act approved 26th of March 1804, an act regulating seamen, &c. approved 3d of March 1813, an act supplementary to acts heretofore passed, &c. approved July 30th, 1813, an act relative to evidence in case of naturalization, approved May 29th, 1824, all of which acts are in force and should have preceded the act published in the appendix.<sup>59</sup>

To avoid a repetition of such a delay, the Governor urged the appointment of a Public Printer.<sup>60</sup> But this recommendation met with little favor during the Territorial period, and the printing was given to those printers who were allied with the dominant political party.

<sup>59</sup> *House Journal*, Territory of Iowa, 1839-1840, p. 13. For the report of the legislative committee on the delay in printing, which gives a partial history of *The Old Blue Book*, see *House Journal*, Territory of Iowa, 1839-1840, pp. 46-48.

<sup>60</sup> *House Journal*, Territory of Iowa, 1839-1840, p. 13.



At the session of 1839-40 it became necessary to provide for the payment of the printing of *The Old Blue Book*. Messrs. Russell and Reeves had filed bonds in the sum of five thousand dollars, with three securities, that the laws would be published on May 1, 1839.<sup>61</sup> Because of the delay the Governor thought the legislature should interfere;<sup>62</sup> but in the early part of the second session a joint resolution was passed, declaring "That Russell & Reeves, publishers of the laws of the territory, be and they are hereby entitled to the balance due on said work, as though the same had been done by the first day of May eighteen hundred thirty-nine."<sup>63</sup> The Governor refused to sign this resolution, and it was passed over his veto.<sup>64</sup> What is meant by "balance" in this resolution is hard to determine. After Russell & Reeves had filed their bond, Mr. Grimes had introduced in the House a resolution that \$1,500 be advanced to them, but such resolution never became a law.<sup>65</sup> They were paid, however, "the like prices allowed for work by Congress". This amounted to \$3,943.00.<sup>66</sup> The last word on the question of paying for this code was given in the report of a committee to examine the amount annually appropriated for public printing.<sup>67</sup> It reads:—

Your committee are of opinion, that, at the prices fixed, the amount for printing the first volume should not have exceeded \$3239.36. Yet it will be seen by the above exhibit, that \$3943.00 was appropriated to satisfy "a balance" supposed to be due for

<sup>61</sup> *House Journal*, Territory of Iowa, 1838-1839, p. 263.

<sup>62</sup> *House Journal*, Territory of Iowa, 1839-1840, p. 13.

<sup>63</sup> Joint Resolution, No. 2. *Laws of the Territory of Iowa*, 1839-1840, p. 147.

<sup>64</sup> See above note 63.

<sup>65</sup> *House Journal*, Territory of Iowa, 1838-1839, p. 263.

<sup>66</sup> See report of the Investigating Committee, *House Journal*, Territory of Iowa, 1841-1842, pp. 234, 235.

<sup>67</sup> *House Journal*, Territory of Iowa, 1841-1842, p. 236.



that object — what was the whole sum allowed for that work the committee have been unable to ascertain; but this “balance” exceeds the amount your committee believe to have been due for the whole of said work; the sum of \$703.64.

Despite the fact that *The Old Blue Book* was hastily gotten together and comprised the laws of only one session of the Legislative Assembly, it was, nevertheless, destined to serve as a code of law for another jurisdiction, namely, Oregon. From 1841 until 1845 the question of local government in Oregon was a serious one. The United States had made no provision for a form of government and many of the settlers, who were loyal to the United States, feared that the joint occupancy of the country by Great Britain and the United States would terminate in the Englishman's favor. Accordingly, they did everything in their power to hold Oregon for the Union.<sup>68</sup> The most important act of the settlers was, perhaps, the formation of the Provisional Government.<sup>69</sup> On May 2, 1843, a meeting was held at Champoeg where it was decided by the settlers, by a very close vote, to form a government.<sup>70</sup> A committee was appointed to draw up a constitution which was to be submitted on July 5, 1843. The preamble of the report reads:—

We, the people of Oregon Territory, for the purpose of mutual protection and to secure peace and prosperity among ourselves,

<sup>68</sup> The following papers deal with the organization of Oregon Territory: Bradley's *Political Beginnings in Oregon* in *The Quarterly of the Oregon Historical Society*, Vol. IX, p. 42; Herriott's *Transplanting Iowa's Laws to Oregon* in the *Annals of Iowa*, 3rd Series, Vol. VI, p. 455, reprinted in *The Quarterly of the Oregon Historical Society*, Vol. V, p. 139; Scott's *The Formation and Administration of the Provisional Government of Oregon* in *The Quarterly of the Oregon Historical Society*, Vol. II, p. 95; Robertson's *The Genesis of Political Authority and of a Commonwealth Government in Oregon* in *The Quarterly of the Oregon Historical Society*, Vol. I, p. 3; Benton's *Thirty Years' View*, Vol. II, pp. 470-482; and the *Congressional Globe*, 1842-1843, pp. 149-155.

<sup>69</sup> Scott's *The Formation and Administration of the Provisional Government of Oregon* in *The Quarterly of the Oregon Historical Society*, Vol. II, p. 95.

<sup>70</sup> *The Quarterly of the Oregon Historical Society*, Vol. IX, p. 50.



agree to adopt the following laws until such time as the United States of America extend their jurisdiction over us.<sup>71</sup>

Two sections in this constitution provide for the adoption of the Iowa statutes. Article 12 of Section 2 declares:—

The laws of Iowa territory shall be the laws of this territory, in civil, military and criminal cases; where not otherwise provided for, and where no statute of Iowa applies, the principles of common law and equity shall govern.<sup>72</sup>

Again in Article 19 the framers of the Provisional Government made the following provision:—

That the following portion of the laws of Iowa, as laid down in the statute laws of the territory of Iowa enacted at the first session of the legislative assembly of said territory held at Burlington, A. D., 1838-9, published by authority, Du Buque, Bussel [Russell], and Reeves, printers, 1839. Certified to be a correct copy by Wm. B. Conway, secretary of Iowa territory, be adopted as the laws of this territory.<sup>73</sup>

A list of over thirty acts is then appended to the resolution.<sup>74</sup> Thus were the laws of Iowa embodied in the first Constitution of Oregon. The legislature which met later passed an act “adopting the statutes of Iowa, so far as they were applicable to the circumstances of the country.”<sup>75</sup>

Two reasons have been assigned for the adoption of the Iowa statutes as a part of the Constitution of Oregon. One writer says that “there was but one copy of the Iowa code in Oregon, and so far as we have been able to find out, there was no other copy of any kind of a code within reach of

<sup>71</sup> *The Quarterly of the Oregon Historical Society*, Vol. IX, p. 51.

<sup>72</sup> *Annals of Iowa*, 3rd Series, Vol. VI, p. 459. This constitution, copied from Grover's *Oregon Archives*, pp. 28-32, may be found in Bancroft's *History of Oregon*, Vol. I, pp. 306-309.

<sup>73</sup> *Annals of Iowa*, 3rd Series, Vol. VI, p. 459.

<sup>74</sup> *Annals of Iowa*, 3rd Series, Vol. VI, p. 460.

<sup>75</sup> *The Quarterly of the Oregon Historical Society*, Vol. IX, p. 59.



the legislators, and ignorant of modes of legal procedure as they were, it was necessary that they have some guide."<sup>76</sup> The same writer suggests that Iowa was laboring under the same conditions as Oregon, and her laws were more suitable than those of any other State or Territory for the use of the "Provisional Government."<sup>77</sup> Another writer intimates that the Iowa statutes might have been adopted as the result of a bill introduced in the United States Senate by Senator Louis F. Linn of Missouri, which provided for the organizing of Oregon into a Territory and extending the jurisdiction of the courts and judges of Iowa over the new Territory.<sup>78</sup> The bill failed of passage, but the provisions therein may have induced the inhabitants to consider Iowa's laws more favorably than those of any other commonwealth.<sup>79</sup>

The original edition of *The Old Blue Book* is very rare, and this fact led the Historical Department of Iowa to reprint the volume in 1900.<sup>80</sup> Judges Horace E. Deemer and Scott M. Ladd had this work in charge, and they had printed one thousand copies, bound in sheep, and of a larger size than the original. The reprint contains six hundred thirty-four pages, six by nine inches in size.

It should be remembered that *The Old Blue Book* did not contain all the law of the Territory. In 1839 the Judiciary Committee of the House reported a list of thirty-four acts of the Territories of Wisconsin and Michigan that were in force in Iowa.<sup>81</sup> Most of these acts related to the subjects

<sup>76</sup> *The Quarterly of the Oregon Historical Society*, Vol. IX, p. 59.

<sup>77</sup> *The Quarterly of the Oregon Historical Society*, Vol. IX, pp. 59, 60.

<sup>78</sup> Benton's *Thirty Years' View*, Vol. II, p. 470.

<sup>79</sup> *Annals of Iowa*, 3rd Series, Vol. VI, p. 462.

<sup>80</sup> Prefatory note to the reprint of *The Statute Laws of the Territory of Iowa, 1838-1839*.

<sup>81</sup> *House Journal*, Territory of Iowa, 1839-1840, p. 51.



of property or criminal law, and in certain cases were the only laws on the subjects covered, which were in existence in Iowa.<sup>82</sup>

Except as modified by acts of the Legislative Assembly, *The Old Blue Book* remained in force for four years, or until the *Revised Statutes of the Territory of Iowa*, 1842-1843, known to the bar as *The Blue Book*, was adopted. The majority of the laws were held in high regard, owing, no doubt, to their simplicity and clearness. Indeed, many of the acts were models in every respect. Few met with criticism and disapproval. Although many petitions came to the legislature to repeal the law concerning Blacks and Mulattoes,<sup>83</sup> the legislature persistently refused to modify the statute. Indeed, the select committee, to which the petitions were referred, reported that "an amendment to the law, prohibiting, positively, their settlement among us, would approach more nearly the true policy of our Territory."<sup>84</sup>

This interesting little book was the forerunner of the codes of Iowa. Though it did not contain all the statute law in force, it served the same function as the present-day code. In it there was no attempt to classify the law according to topics, or arrange the acts in the order of their approval by the Governor. The laws were arranged alphabetically under a system of arbitrary headings, which were in many cases misleading. But the laws themselves were of a high character. It was only natural that with every session of the legislature new laws should have been enacted, until it became necessary to displace this work with another more complete. But for four years *The Old Blue Book* served as a guide to Iowa's laws, and for five years

<sup>82</sup> The act regulating marriages was one of this class.

<sup>83</sup> *House Journal*, Territory of Iowa, 1840-1841, p. 235.

<sup>84</sup> *House Journal*, Territory of Iowa, 1841-1842, p. 224.



under the Provisional Government it served as a part of the Constitution of Oregon. In it were first enunciated some of the principles of Iowa jurisprudence and it stands to-day as the first monument to codified law in Iowa.

## THE BLUE BOOK

It soon became evident, that with the large number of new laws passed at each session of the Legislative Assembly, *The Statute Laws of the Territory of Iowa, 1838-1839*, would have a rapidly decreasing value. Furthermore, many laws were repealed during this period,<sup>85</sup> so that it became difficult to tell what statutes were in force, and what were not. On November 5, 1840, Mr. Shepherd Lefler of Des Moines County, who was chairman of the Judiciary Committee,<sup>86</sup> introduced a resolution in the House of Representatives calling "for the appointment of a Committee to revise the laws".<sup>87</sup> After being buffeted about, the resolution was indefinitely postponed. Again, in the session a year later, Mr. James K. Moss of Jackson County introduced a "Joint Resolution relative to the revision of the laws of the Territory".<sup>88</sup> This bill seemed to show some signs of passing, but it was laid upon the table shortly before the close of the session.

Early in the session of 1842-1843 the question of revising the laws was again agitated. One leading newspaper, speaking editorially, plainly states that "The opinion has been for a long time past universal among those most con-

<sup>85</sup> At the extra session of 1840 an act was passed repealing all the laws of Michigan and Wisconsin in force on July 4, 1838, and also provided that "none of the statutes of Great Britain shall be considered as law of this Territory." — Chapter 29, *Laws of the Territory of Iowa, Extra Session, 1840*, p. 21; reprint p. 25. See also above note 4.

<sup>86</sup> *House Journal, Territory of Iowa, 1840-1841*, p. 16.

<sup>87</sup> *House Journal, Territory of Iowa, 1840-1841*, p. 149.

<sup>88</sup> *House Journal, Territory of Iowa, 1841-1842*, p. 177.



versant with the operation and effect of our statutes that they need a careful revision.”<sup>89</sup> The *Iowa Capitol Reporter* (Iowa City) declares that “there has perhaps never been an instance in our country where the laws continued in so imperfect, defective, confused and conflicting state for so long a time”, and it further declares that the need for revision is a “highly necessary and pressing exigency”.<sup>90</sup> Nevertheless there was strong opposition to revision encountered in both houses. On December 7, 1842, in the House of Representatives, Mr. Thomas McMillan of Henry County offered the following resolution:—

Resolved, by the Council and House of Representatives, That it is expedient to revise the laws of a general nature now in force in this Territory, and that a committee of —— members on the part of the Council, and —— members on the part of the House of Representatives, be appointed a Committee of Revision for that purpose.<sup>91</sup>

A week later the resolution was amended so as to read:—

That a committee of three be appointed on the part of the House, to confer with a similar committee to be appointed on the part of the Council, to take into consideration the expediency of revising the laws of this Territory, and report to this House.<sup>92</sup>

The resolution as thus amended was adopted by the House and Messrs. George H. Walworth, Thomas McMillan, and Thomas Rogers were appointed on the Committee.<sup>93</sup> Three days later these gentlemen reported a resolution favoring a revision of the laws of the Territory and calling

<sup>89</sup> *Iowa Capitol Reporter* (Iowa City), Vol. II, No. 3, Saturday, December 24, 1842.

<sup>90</sup> *Iowa Capitol Reporter* (Iowa City), Vol. II, No. 3, Saturday, December 24, 1842.

<sup>91</sup> *House Journal*, Territory of Iowa, 1842-1843, p. 16.

<sup>92</sup> *House Journal*, Territory of Iowa, 1842-1843, p. 39.

<sup>93</sup> *House Journal*, Territory of Iowa, 1842-1843, p. 39.



for the appointment of a committee of eight, which was to act with a similar committee from the Council<sup>94</sup> as a standing committee on revision. It appears, however, that about one-third of the members were much opposed to such a method of revision, and through Mr. Thomas Rogers they offered a substitute, providing "that three competent individuals be appointed by the Governor, by and with the advice and consent of the Council for that purpose, and report the result of their labors to the next session of the Legislature".<sup>95</sup> But by a vote of nineteen to seven this substitute was lost and the committee's report was adopted.

A spirited contest also took place in the Council. On December 9, 1842, Mr. Joseph B. Teas of Jefferson County introduced a resolution calling for the appointment of a committee to work with a similar committee from the House "to revise and compile" the laws of the Territory.<sup>96</sup> This was referred in the course of time to the Judiciary Committee, but before they could report, the House resolution calling for the committee to investigate the "expediency" of revising the laws was received and adopted by the Council, Messrs. Joseph B. Teas, Robert Christie, and William H. Wallace being appointed on the committee.<sup>97</sup>

Here, as in the House, the joint resolution which the committee reported<sup>98</sup> had its enemies. Mr. Thomas Cox, an influential member, moved to amend the resolution "by requiring the Judges of the Supreme Court to revise and compile the laws and report to the next Session of the Legislature",<sup>99</sup> but his motion was lost by a vote of nine to three.

<sup>94</sup> *House Journal*, Territory of Iowa, 1842-1843, p. 49.

<sup>95</sup> *House Journal*, Territory of Iowa, 1842-1843, p. 50.

<sup>96</sup> *Council Journal*, Territory of Iowa, 1842-1843, p. 14.

<sup>97</sup> *Council Journal*, Territory of Iowa, 1842-1843, p. 23.

<sup>98</sup> See above note 94.

<sup>99</sup> *Council Journal*, Territory of Iowa, 1842-1843, p. 27.



The majority seemed determined to kill all amendments or substitutes, and in the end the original report of the committee was adopted.

The resolution which was finally adopted by the Legislative Assembly provided for a standing committee on revision to be composed of four members from the Council and eight from the House. Those appointed from the Council were Mr. Joseph B. Teas, who had worked hard to secure the passage of the resolution, and Messrs. William H. Wallace, William Patterson, and Robert Christie.<sup>100</sup> From the House came Messrs. Frederick Andros, Henry Felkner, Abner Hackleman, Isaac N. Lewis, Joseph Newell, Joseph M. Robertson, and two champions of the revision, Messrs. Thomas McMillan and George H. Walworth.<sup>101</sup>

Newspaper sentiment was not wholly in favor of such a method of revision as had been adopted. One of the newspapers most friendly to the measure considered it a makeshift, until the Territory should become the State of Iowa.<sup>102</sup> Another leading newspaper of the day arraigns the measure in the following terms:—

If such a work should be executed *skilfully* it would be a great public benefit, but if it cannot so be done, it would be better let alone and left undone. It appears from the resolution first introduced, and from some remarks made in the House where it was moved, that an idea is entertained of having a revision made by the legislature itself, during its session. It is *impossible* in the nature of things that such a revision can be in any way a complete one, or such as is demanded. The defects of a system of laws cannot be perceived on a casual or even a careful reading by an experienced lawyer, much less can they be understood by persons not expert in the law; as are most of the members of our legislature. A ship

<sup>100</sup> *Council Journal*, Territory of Iowa, 1842-1843, p. 28.

<sup>101</sup> *House Journal*, Territory of Iowa, 1842-1843, p. 55.

<sup>102</sup> *The Iowa Standard* (Iowa City), Vol. III, No. 4, Thursday, December 29, 1842.



builder or a master sailor may look at a piece of construction in that art, and both pronounce it to be perfect in model and finish: but when the master has become better acquainted by an actual trial, he frequently finds that he has been much deceived, and that the performance of his vessel in some respects is by no means equal to the promise held out to the eye. He then is first made acquainted with its defects. So it is with laws. It is necessary that even a jurist should be acquainted with their practical operation in the courts, before he is sensible of their defects.

But if the legislature were composed wholly of such kind of men, they would be unable to make a proper revision of laws *during the session*. My life on it, the best lawyers in both houses will so confess. A revision of a body of laws requires the patient, secluded, uninterrupted labor of the closet. It cannot be effected in the midst of the multiplied and various business of legislation, in the hurry, din, confusion, and political intrigue, the thousand applications and interruptions from abroad, the perpetual bustle, motion, argumentation and project of the members themselves. This is no time, this is no place, these are not attendants favorable to a calm and deliberate examination, to the patient and severe labor of providing and skilfully executing the work of a new body of laws.

It would be no compliment to former legislatures to assume on the part of the present, that these could, under the very same circumstances, and with the same facilities enjoyed by former legislatures, and no better, put the laws into so much better shape as is requisite than their predecessors could.

The expense of doing the work by the legislature would be much greater than by a committee of jurists, and the work when done, would be of very little value, or none at all. It would still require that revision which it can only have in a mode different from that intimated in the resolution. The time required for its completion in that way was assumed to be fifty days. The legislature is composed of thirty nine members and ten officers — in the whole forty-nine. These are all under pay while the work progresses, fifty days at three dollars a day: the whole expense of which will be \$7350. The expense of printing would raise the whole expense of the work to about \$10,000, and it would be nearly if not quite lost. On the other hand, committee of two jurists at \$1500 or three at \$1000 would be competent to complete the business, which would be a



saving of \$4000 to \$5000 dollars; and the work when done would be much more valuable.<sup>103</sup>

On January 23, 1843, a resolution was introduced in the Council calling upon the Secretary of the Territory to receive proposals from the different editors in the Territory for the printing of the laws<sup>104</sup>—a proposition which did not meet with general approval. As a matter of fact the printing was let by joint resolution to Hughes and Williams,<sup>105</sup> to be done according to the prices prescribed by law.<sup>106</sup> This resolution, however, did not pass without strong opposition, as the firms of John B. Russell and of Wilson and Keesecker had many friends in both houses.<sup>107</sup>

The exact method of preparing the book is not fully known, as much of the labor was done as committee work, of which no records were preserved. The title of the book gives the information that the laws contained therein were "Revised and Compiled by a Joint Committee of the Legislature . . . and Arranged by The Secretary of the Territory."<sup>108</sup> At various times throughout the session the Committee on Revision reported the introduction of bills for the action of the legislature. The labor performed by the Secretary in arranging the laws was prescribed in the Organic Law of the Territory;<sup>109</sup> but the Legislative Assembly also empowered him to employ an assistant, appropriating therefor the sum of two hundred and fifty dollars.<sup>110</sup>

<sup>103</sup> *Iowa Capitol Reporter* (Iowa City), Vol. II, No. 3, Saturday, December 24, 1842.

<sup>104</sup> *Council Journal*, Territory of Iowa, 1842-1843, p. 80.

<sup>105</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 730.

<sup>106</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 498.

<sup>107</sup> *Council Journal*, Territory of Iowa, 1842-1843, p. 156.

<sup>108</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, the title page.

<sup>109</sup> *The Statute Laws of the Territory of Iowa*, 1838-1839, p. 32.

<sup>110</sup> *Local Laws of the Territory of Iowa*, 1843, joint resolution number 10, p. 98.



The law authorizing the publishing of this work provides that "two thousand five hundred copies of the laws of a general nature, enacted at the present session of the Legislative Assembly, together with all laws of a general nature, ordered to be reprinted by this Legislative Assembly, shall be published in one volume, to be bound after the manner of the volume of laws enacted at the first session of the Legislative Assembly in 1838 and '9."<sup>111</sup> The local laws and those of a private nature were printed in a separate volume.<sup>112</sup> This fact explains the absence of statutes of a general nature in the session laws of this Legislative Assembly.

The *Revised Statutes of the Territory of Iowa, 1842-1843*, was known to the bench and bar as *The Blue Book*, and like its predecessor it derived this name from the color of its covers.<sup>113</sup> In size the compilation of 1842-1843 is larger than the earlier volume of 1838-1839, containing nine hundred and four pages as compared with five hundred and ninety-eight pages in the latter. The title page reads:—

REVISED STATUTES  
OF THE  
TERRITORY OF IOWA,  
REVISED AND COMPILED BY A JOINT COMMITTEE OF THE  
LEGISLATURE — SESSION 1842-'43,  
AND ARRANGED BY  
THE SECRETARY OF THE TERRITORY.

—————  
PUBLISHED BY AUTHORITY.  
—————

IOWA CITY :  
PRINTED BY HUGHES & WILLIAMS.  
1843.

<sup>111</sup> *Revised Statutes of the Territory of Iowa, 1842-1843*, p. 378.

<sup>112</sup> The laws of a local nature were printed in pamphlet form and entitled *Local Laws of the Territory of Iowa, 1843*.

<sup>113</sup> See above note 13.



The certificate of the Secretary is dated July 1, 1843, and states "that the Acts and Resolutions, hereinafter published have been compared with the copies on file in this Office, and that they correspond in every respect with said copies." O. H. W. Stull was Secretary at this time and on him was later placed the blame for the delay in the preparation of the volume.

Aside from the laws and resolutions, the scope of the contents of *The Blue Book* are very similar to those of *The Old Blue Book*. There is the Declaration of Independence, the Constitution of the United States and the amendments thereto, the Ordinance of 1787, the Organic Law and the two amendments to the same, and the Treaty of Cession of Louisiana. Following the joint resolutions is a list of the published acts, by number and title, and the Federal Act concerning the Naturalization of Aliens. An interesting and valuable feature of *The Blue Book* is a section entitled "Explanations of certain terms made use of in the existing Laws of Iowa."<sup>114</sup> The index covers one hundred seventy-three pages and is more complete than the unsatisfactory indices found in most of the volumes of early Territorial or State documents.

The laws contained in this volume are divided into one hundred sixty-two chapters, which are arranged alphabetically in the same manner as in *The Old Blue Book*. Some of the headings, not having been selected with proper regard to the purpose or contents of the act, are misleading. Forty-seven of the chapters are taken in whole or in part from *The Old Blue Book*; while one hundred fifteen chapters are acts passed subsequent to the session of 1838-1839.<sup>115</sup> Each act is introduced by an abstract of the sec-

<sup>114</sup> *Revised Statutes of the Territory of Iowa, 1842-1843*, p. 745.

<sup>115</sup> The acts taken from *The Old Blue Book* are in most cases taken entire, only one or two being taken in part.



tions — which takes the place of the marginal notes in *The Old Blue Book*.

An examination of the various laws included reveals some interesting facts. There are fourteen distinct chapters referring to the courts,<sup>116</sup> instead of one act creating and regulating the same. Chapter sixty-six is headed “Education”, but provides for gifts of land to educational or religious societies.<sup>117</sup> Another chapter is an act “to abolish imprisonment for debt”;<sup>118</sup> and it is worthy of note that this is the first time in the history of Iowa that such an act appears in a compilation other than the Session Laws.<sup>119</sup> Chapter eighty-two, headed “Immoral Practices”,<sup>120</sup> makes it a misdemeanor punishable by a fine to sell intoxicating liquor on the Sabbath or to swear within the hearing of any religious assembly. The act on “Worshipping Congregations”,<sup>121</sup> contains stipulations similar to those in the act on “Immoral Practices”.

The section on “Justices of the Peace” is the longest in the book<sup>122</sup>—covering sixty-eight pages—and along with the two chapters on “Practice”<sup>123</sup> constitutes the code of civil procedure. Section three of the law on “Grocery Licenses”<sup>124</sup> holds that “A grocery shall be deemed to include any house or place where spirituous or vinous liquors are retailed by less quantities than one gallon.” The li-

<sup>116</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 135.

<sup>117</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 242.

<sup>118</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 235.

<sup>119</sup> A similar act had been first published in the *Laws of the Territory of Iowa*, 1839-1840, Chapter 82, p. 122.

<sup>120</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 294.

<sup>121</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 657.

<sup>122</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 302.

<sup>123</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 466.

<sup>124</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 373.



cense fee ranged between twenty-five and one hundred dollars, according to the will of the county commissioners.<sup>125</sup>

There are three acts concerning the militia, the first being approved on January 4, 1839; the second on July 31, 1840; and the third on February 17, 1842. It is difficult to understand why the first act is included as it is superseded by the second.<sup>126</sup> One of the peculiar sections of this latter act reads as follows:—

The commandants of companies are hereby authorized to put under guard, or to commit to prison for the day, and to return to the proper court-martial, any non-commissioned officer, musician or private, who shall appear on parade wearing any false face, personal disguise or other unusual ludicrous article of dress, or any arms, weapons, or other implements or things not required by law, and which are calculated to interrupt the peaceable and orderly discharge of duty.<sup>127</sup>

The book contains a chapter on "Marriages", which was lacking in *The Old Blue Book* — the laws of Michigan and Wisconsin being the only statutes then in force on that subject. The act on "Divorce and Alimony" is also one which appears for the first time in a book of Iowa law. Other chapters on important subjects which are new in this volume are those on "Landlord and Tenant", "Agriculture", "Mortgages", "Fugitives from Justice", "Poor Houses", "Coroners", "Common Schools", "Trespassing Animals", "Townships", and "Prairies".

In some instances the laws in *The Blue Book* lack the brevity and clearness of those in *The Old Blue Book*. For example confusion is caused by the appearance in several instances of two acts on the same subject. This situation

<sup>125</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 374.

<sup>126</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 396.

<sup>127</sup> *Revised Statutes of the Territory of Iowa*, 1842-1843, p. 413.



resulted in all probability from the method employed in revision, as it was difficult to make a critical inspection of the numerous laws on the different subjects in the manner adopted by the committee on revision.

At the close of the session, Mr. John D. Elbert, the President of the Council, said in his farewell address: "Your untiring efforts to perfect a code of laws for the people of this rapidly rising, interesting and beautiful Territory, cannot fail to meet their entire approbation."<sup>128</sup> A year and a half later Governor John Chambers in his annual message declared that "Our Statutory Code seems to be satisfactory to the people, and I am not aware that any material changes in it are necessary."<sup>129</sup>

Despite these statements *The Blue Book* did not meet with universal approval. In the first place there was great delay in getting it into the hands of those who were to use it. The principal reason for the delay is explained by Mr. Charles Negus in his article on *The Early History of Iowa*.<sup>130</sup>

It was made the duty of the secretary to take charge of their publication and distribution [Revised Statutes]. Stull, who was then secretary, undertook the work, but, before he had completed it, was turned out of office, and S. J. Burr appointed in his place. Stull, being very much incensed at being deprived of his office, immediately abandoned the superintending of publishing and distributing the laws, and left the business in such a condition that it was very difficult to readily proceed with the work. On account of this interruption, the laws were not ready for distribution till late the next fall, and the people were from six to nine months with scarcely anyone knowing what the laws were. This delay caused

<sup>128</sup> *Council Journal*, Territory of Iowa, 1842-1843, p. 185.

<sup>129</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. I, p. 285.

<sup>130</sup> Negus's *The Early History of Iowa* in the *Annals of Iowa*, April, 1871, Vol. IX, No. 2, p. 474.



the clause to be inserted in the constitution, soon after framed, which provided that no laws of a public nature should take effect until the same were published and circulated in the several counties by authority.<sup>131</sup>

The contemporary newspapers also blame Secretary Stull. William Crum, the editor of *The Iowa Standard* (Iowa City), writes:—

For the information of those at a distance, who are desirous of knowing in what situation the Revised Statutes of session before last, are, we will say that they have been bound and ready for delivery for the last three months. It is the duty of Ex-Secretary Stull to distribute them, or see that it is done; for he has received four hundred and fifty dollars for indexing and distributing them: Perhaps he was not aware that they were finished.<sup>132</sup>

The severest criticisms passed upon *The Blue Book* were in reference to its contents and the arrangement of the laws. In December, 1843, one of the leading newspapers contained these words:—

One very necessary work to be performed by the present Legislature will be to *revise* the *Revision*. As *unfinished business*, it might claim precedence of anything else. To be sure, no passing legislation can efface all its crudities, or set right the whole of its undigested and undigestible enactments. . . . But some of the more glaring faults might be corrected, and the rest left to be removed when a State code shall be arranged.<sup>133</sup>

Then follows a comparison of various sections of the revenue law, the valuation law, and the statute on Crimes and Punishments. In concluding the article the editor remarks:—

We will not take up our space by further citations. What we have brought to view sufficiently proves the necessity for a re-

<sup>131</sup> *Constitution of Iowa*, 1846, Art. 3, Sec. 27.

<sup>132</sup> *The Iowa Standard* (Iowa City), Vol. IV, No. 20, Thursday, May 16, 1844.

<sup>133</sup> *The Iowa Standard* (Iowa City), Vol. III, No. 49, Thursday, December 7, 1843.



Revision. Nor will we, at this time, allude to imperfections in other particulars, attaching to the work — lest we be subjected to a charge of ill-will.

The criticisms on the arrangement of the laws have been summed up by Judge Emlin McClain as follows:—

The Revised Statutes of the Territory published in 1843, compiled by a joint committee of the Legislature and arranged by the Secretary of the Territory, was a mere aggregation of existing statutes, under general headings selected with more or less discretion as the case might be, and arranged in alphabetical order. The results of this plan were in some instances truly wonderful. You find for example edifying chapters on Abatement, Agent, Auctioneer, Acts Amended, Blacks and Mulatoes, Chancery, Dogs, Right, Gaming, Immoral Practices, Grocery License, Laws, Prairies, Right, Stallions and Jacks, Wolves, and Worshipping Congregations; and you marvel at the high regard for consistency and convenience which seems to have dominated the minds of the compilers in selecting the titles and thus determining the order of the contents. It must have required the concurrent wisdom of master minds to collect provisions as to commissioners to sell county lands, a superintendent of public buildings at Iowa City, and commissioners to sell town lots in Iowa City, all under the head of Agents; to arrange in another chapter designated as Acts Amended, various provisions relating to taking up strays, fixing terms of court, regulating criminal procedure, and sales under execution; to place provisions relating to the offense of swearing within the hearing of a religious assemblage in the chapter on Immoral Practices and those as to the disturbance of a religious meeting by profane swearing, vulgar language, or immoral conduct in a chapter on Worshipping Congregations in a distant part of the volume; to bring together two different codes for the government of the militia, one of which wholly superceded the other; to treat Bills of Exchange in one place and Promissory Notes in another; to treat the Action of Right as a substitute for ejection and again among the R's; to insert in the chapter headed Repeal, and regulating the effect of the repeal of a statute, a section repealing, "An act respecting seals"; to collect statutes as to Roads in one place and insert elsewhere as the sole topic under Supervisors a section as to penalties



for refusing to work on the roads, while provisions as to Road Tax were placed in a chapter between Trespassing Animals and Townships; and to treat Boats and Vessels in one chapter and Watercrafts, Lost Goods and Estrays in another.<sup>134</sup>

*The Blue Book* was the last attempt to publish all the statutes of the Territory in one volume. Neither *The Blue Book* nor its predecessor were codes, as the term is technically used; but both books had many features which made them more than mere compilations of existing statutes. Their influence was considerable, since the statutes which they contain were the ground-work for the later laws of Iowa. Indeed, many of the splendid features of Iowa law are to be traced to the statutes of the Territorial period. Following the publication of *The Blue Book*, the question of State organization and admission into the Union engrossed the attention of the legislators and the question of another revision was not seriously considered until statehood had been secured.

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<sup>134</sup> McClain's *Charles Mason — Iowa's First Jurist* in the *Annals of Iowa*, 3rd Series, Vol. IV, p. 605.