

HISTORY OF THE CODES OF IOWA LAW

III

THE REVISION OF 1860

INTRODUCTION

The *Revision of 1860* cannot be called a new code, for it followed the *Code of 1851* in arrangement and also to a great extent in subject matter. Its purpose was to gather in one collection all of the statute laws enacted during the period between 1851 and 1860 and to give to the State a new civil and criminal practice act. The Commissioners to whom the work was intrusted did not attempt a codification; they "intended a mere revision, such as would be met by a compilation and arrangement in proper order of the existing laws, without change".¹ The Commissioners clearly stated their position when they declared: "This revision which we offer you, does not need to be enacted, as it is the law as it exists already. We add nothing to the law — subtract nothing therefrom — make no change of word or phrase — merely of the arrangement of the existing law."² Consequently the *Revision of 1860* was for the most part simply a copy of the *Code of 1851*, with the addition of subsequent acts of the legislature. Such a method has never since been followed in making a codification of the laws of this State.

Two parts of the *Revision of 1860*, however, were codified to a certain degree and not merely revised. By the act providing for the revision the Commissioners were "directed to prepare a code of civil and criminal procedure".³

¹ *Revision of 1860*, Preface, p. iv.

² *Revision of 1860*, Preface, p. v.

³ *Laws of Iowa*, 1858, Chap. 40, pp. 47, 48.

Codes of civil and criminal procedure were accordingly drafted, the acts in the *Code of 1851* being made the foundation and the additions thereto being prepared by the Commissioners.

REASONS FOR THE REVISION OF 1860

The causes which brought about the revision were numerous. In his last message to the legislature Governor Grimes had declared that the edition of the *Code of 1851* was exhausted, as was also the supply of some of the session laws.⁴ Then, too, the period from 1850 to 1860 was one of great expansion for the new State, both in population and in commercial enterprise.⁵ For this reason much new and varied legislation was scattered throughout the several volumes of session laws. In addition, the *Code of 1851* had caused a great change in the manner of pleading, which seemed not to be fully understood by the legal profession, and as a consequence widely different methods were used in different parts of the State. In speaking of the introduction of simple code pleading, the Commissioners deplored the fact that the courts had been inclined to hold that the *Code of 1851* did not apply to chancery practice as well as to law.⁶ They declared that there was no case deciding that the Code applied equally to equity and legal procedure, although it had been so intended by Judge Mason, its framer. The opponents of this view were successful, they stated, in insisting "that it only in some very undefined measure, so applies, and in many decisions a want of such applicability, in the same undefined way, seems assumed."⁷

⁴ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 61.

⁵ Horack's *The Government of Iowa*, pp. 10, 11.

⁶ *Report of the Code Commissioners on the Civil Practice Act*, p. 191.

The exact title of this report is *Report of the Code Commissioners*, but the above title is used to distinguish it from a similar report on the criminal practice act.

⁷ *Report of the Code Commissioners on the Civil Practice Act*, pp. 191, 192.

Besides the confusion existing as to the applicability of the *Code of 1851* alike to law and equity, the Commissioners declared in their report that there was confusion in regard to procedure even in law cases. They state:

Even at law, it [the *Code of 1851*] has not secured that prompt justice, which it was meant to do; too many technical constructions have been applied to it, and it has been interpreted too much in the light of the very forms and precedents which it was designed to abate and ignore. We know that human language cannot be put into a code which will not need construction; the only hope of the reformer is to avoid this, as much as may be possible, and that such construction may be made by a mind imbued with the genius of the act, so that each extension of it to a new case may be in harmony with its main purpose.⁸

Since there appeared to be so much confusion arising from a misunderstanding of the intent of the *Code of 1851* the Commissioners declared that "these things being thus, the Code being in many applications doubtful, and in some having clearly failed to secure its purpose, the General Assembly imposed upon us, the duty, among other things, of making a code of civil practice."⁹

Still another reason necessitating a revision was the fact that some of the laws in the *Code of 1851* had proved to be unsatisfactory. This was especially true of the lax divorce law, which was amended even before a revision was provided for. The *Code of 1851* had provided that the Judges of the Supreme and District Courts should call the attention of the legislature to any defective portions of such Code.¹⁰ One Judge, Thomas S. Wilson, had reported in 1854 and in his report had enumerated several defects and

⁸ *Report of the Code Commissioners on the Civil Practice Act*, p. 193.

⁹ *Report of the Code Commissioners on the Civil Practice Act*, p. 195.

¹⁰ *Code of 1851*, Section 1588. "Each of the judges of the supreme and district courts shall report to the legislature at each regular session thereof all omissions, discrepancies, or other evident imperfections of the law, which have fallen under his observation."

conflicts in the *Code of 1851*.¹¹ Most of the desired amendments, of course, were to be found in the session laws, but it was highly important that they be brought together in one act.¹²

The paramount reason for a revision, however, was the fact that on September 3, 1857, the new State Constitution, adopted the month previous, went into effect.¹³ In his second biennial message Governor Grimes had stated that all of the general laws of the State required some modifications to adapt them to provisions of the new Constitution.¹⁴ And Governor Lowe in his inaugural address had also urged the framing of a new procedural act. In part he declared that "six years practice under the Code has brought to light many defects, . . . which ought now to be reformed."¹⁵ In fact, the act providing for the revision stated that the Commissioners were "appointed by the

¹¹ The report of Judge Thomas S. Wilson is a very rare document of nine printed pages and is confined, as he says to "the most glaring" of the imperfections.

¹² The school laws, especially, needed a thorough revision. They had become so unsatisfactory that in 1856, by an act approved on July 14, 1856, the Governor was authorized to appoint three commissioners, "whose duty it shall be to revise and improve the school laws of Iowa, and report their proceedings to the next General Assembly". Governor Grimes appointed Horace Mann, Amos Dean, and F. E. Bissell. These gentlemen prepared an important report, but it failed of passage in the legislature. For references on the work of this commission see *Laws of Iowa, 1856, Extra Session*, p. 78; *Appendix to the Journal of the House of Representatives, 1856-1857*, pp. 191-200; *Report of the Superintendent of Public Instruction*, pp. 13-20, found in *Legislative Documents, 1857*; and Parker's *Higher Education in Iowa*, pp. 27, 28.

¹³ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 109; also *Revision of 1860*, p. 988.

The provisions in regard to the taking effect of the Constitution are found in Article XII, Section 13.

¹⁴ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 41.

¹⁵ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 124.

Legislature to conform the Laws of the State to the Constitution and perform other duties".¹⁶

Governor Lowe was anxious that a commission be appointed in order to prepare a practice act. In an address to the legislature on the 13th of January, 1858, he declared:

But in view of the great amount of other business which will occupy your attention during the session, I beg to recommend the appointment of two or three competent legal gentlemen to act at once in conjunction with special committees constituted for that purpose, in revising, amending and getting up a more efficient and perfect practice act, to the end that the same may go out with the publication of the other laws in the spring — and the people of this State be blessed with a system of civil and criminal procedure, under which the great principles of justice and right can be administered — all wrong suppressed — goodness and virtue protected — and evil doers punished.¹⁷

In the same address Governor Lowe also suggested that the publication of a new edition of the Code might be left to private enterprise, as he had been informed that certain persons had undertaken such a work.¹⁸

¹⁶ *Revision of 1860*, Preface, p. iii.

In the inaugural address of Governor Lowe some of the changes required in the laws by the adoption of the Constitution are indicated in the following paragraphs:

"The new Constitution contemplates important legislation upon our judiciary and militia system, upon the school lands and funds, and a radical change in our educational department, as well as other subjects, upon all [of] which it will afford me pleasure to communicate freely with you during your deliberations.

"The questions of currency and agriculture are new subjects of legislation in this State, authorized and enjoined by the Constitution, and possess no ordinary significance."— Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 125.

¹⁷ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 124.

¹⁸ The Governor evidently referred to C. Ben Darwin, for in the *Senate Journal*, 1858, p. 93, may be found the statement that "Mr. Rankin had leave to introduce Senate File No. 21, A bill for an Act to provide for the purchase of the revised Statutes of Iowa, in course of preparation by C. Ben. Darwin," which after being read was referred to the Committee on the Judiciary. Nothing seems to have been reported from the committee on this bill, however.

There seems to have been very little newspaper comment in regard to the proposals for a revision. All classes apparently took it for granted that the necessity was urgent, and other issues of the period being of overshadowing importance,¹⁹ the discussion concerning the revision and the method of procuring the same was not very general, but seems to have been limited to persons holding official positions. Among the latter, especially among members of the legislature, there was a large number of methods proposed. Nevertheless the simplest plan was finally adopted and a commission of three men was appointed.

THE CREATION OF THE CODE COMMISSION

The Seventh General Assembly convened at Des Moines on the 11th of January, 1858,²⁰ and was the first regular session of the legislature under the new Constitution. On Wednesday, the 20th of January, Senator John W. Rankin introduced in the Senate a bill providing for the appointment of commissioners "to revise and codify the laws of the State of Iowa."²¹ Five days later the bill was reported back from the Committee on the Judiciary.²² A majority of the Committee had proposed a substitute for the Rankin bill and recommended its passage. The minority of the Committee, consisting of Daniel Anderson and William Loughridge, however, reported that in their opinion "it would be proper and expedient to employ three Attorneys to arrange and perfect the system of practice, civil and criminal."²³ The minority declared that the plan adopted by the majority would be inexpedient because no change of a material nature was needed; because it would mean an

¹⁹ Slavery and its attendant issues were the all important subjects of public discussion at this period.

²⁰ *House Journal*, 1858, p. 3.

²¹ *Senate Journal*, 1858, p. 87.

²² *Senate Journal*, 1858, pp. 109, 110.

²³ *Senate Journal*, 1858, p. 110.

increased expense; and lastly because the plan of the majority would involve an extra session a year hence, and the laws would be needed before that time. After some discussion the bill, substitute, and report were all laid on the table.²⁴

Two days later this bill was discussed again in the Senate, where it was again tabled.²⁵ Shortly after it had been laid on the table for the second time the following concurrent resolution was received from the House:

Resolved, (the Senate concurring,) that Wm. Smith of Linn county, W. T. Barker, of Dubuque county and C. Ben. Darwin, of Des Moines county, be and they are hereby appointed Commissioners to aid and assist the Judiciary Committees of both Houses in drafting a Code of civil and criminal procedure, and adapt the laws now in force to the provisions of the Constitution.²⁶

This resolution did not interfere with the Senate's consideration of its own bill and for the third time it was again discussed, along with the substitute and minority report.²⁷ After spending a considerable part of the day on Thursday, January 28th, in considering the bill in the Committee of the Whole, the substitute was recommended for adoption, along with certain amendments thereto.²⁸ On the following day this report of the Committee of the Whole was taken up and indefinitely postponed.²⁹

The Rankin bill now being out of the way, the Senate turned its attention to the concurrent resolution noted above. After several attempts had been made to amend it or have a substitute adopted, the following amendment was added, and the resolution passed:

²⁴ *Senate Journal*, 1858, p. 111.

²⁵ *Senate Journal*, 1858, pp. 124, 125.

²⁶ *Senate Journal*, 1858, p. 125.

²⁷ *Senate Journal*, 1858, p. 131.

²⁸ *Senate Journal*, 1858, p. 132.

²⁹ *Senate Journal*, 1858, p. 133.

And that the same shall have been enacted as laws by the General Assembly, that said commissioners shall arrange and index all of the General Laws into one volume, to be published by order of the General Assembly; said volume to contain all general laws in force in the State.³⁰

After making a slight amendment, in which the Senate concurred, the resolution passed the House.³¹ The Commissioners were also allowed, by a Senate resolution, the same amount of stationery as was allowed members of the Senate.³²

The Commissioners thus appointed immediately set to work upon the duties assigned to them, but after becoming better acquainted with the difficulty of their task they reported to the legislature that it would be impossible to complete their work before the close of the session.³³ Thereupon, Mr. Henry H. Trimble of Davis County introduced Senate File No. 98, which was a joint resolution permitting the Commissioners "to continue their work, and report at an adjourned session".³⁴ This resolution was referred to the Committee on Ways and Means, who reported it back with the recommendation that it be indefinitely postponed.³⁵ This action evidently did not meet with the approval of the Senate, for on the motion of Mr. Daniel Anderson "the resolution was re-committed" to the Ways and Means Committee with the following instructions:

That the committee report upon the necessity of republishing laws out of print, the probable cost for such reprint, and the best probable means of revising the laws of the State, and the expediency of an adjourned session; whether good economy, together

³⁰ *Senate Journal*, 1858, pp. 133-135.

³¹ *Senate Journal*, 1858, p. 144.

³² *Senate Journal*, 1858, p. 145.

³³ *Senate Journal*, 1858, p. 161. See also *Revision of 1860*, Preface, p. iii.

³⁴ *Senate Journal*, 1858, p. 225.

³⁵ *Senate Journal*, 1858, p. 247.

with the demands of the people, for a more concise system of laws of a general character, together with a reformed system of practice in courts of justice, can be fully provided for without such adjourned session.³⁶

On the 20th of February, 1858, the committee again reported, and laid before the Senate the correspondence between it and the Revising Commissioners and in addition a resolution which urged the Commissioners to complete their labors by the 10th of April, 1858, at the same time calling upon the legislature to remain in session until after that date.³⁷ This report and resolution was vigorously attacked and after being amended the original resolution passed the Senate with the following title:

JOINT RESOLUTION,

Authorizing the Commissioners to conform the laws of the State to the Constitution, and report to the present session of the Legislature the same. Also, to prepare a Code of civil and criminal procedure, and revise the laws and report the same at such time as the Legislature may designate.³⁸

The above resolution passed the House on February 23, 1858,³⁹ but four days later it was vetoed in the following message from the Governor:

Gentlemen of the Senate and House of Representatives.

I return, with my objections, to the Senate whence they originated, the Joint Resolutions authorizing the Commissioners to conform the laws of the State to the Constitution, and report to the present session of the Legislature the same: Also to prepare a code of civil and criminal procedure and revise the laws, and report the same at such time as the Legislature may designate.

This is no uncommon form of legislation, but it should be remembered that Joint Resolutions directing something to be done by third persons, either during or after the termination of the legislative

³⁶ *Senate Journal*, 1858, p. 248.

³⁷ *Senate Journal*, 1858, pp. 261-265.

³⁸ *Senate Journal*, 1858, p. 268.

³⁹ *House Journal*, 1858, pp. 355, 356.

session, take the form as well as the force of law, and are subject to the same regulations and solemnities in their enactments as other bills. The Constitution of this State requires the style of all laws to be, "*Be it enacted by the General Assembly of the State of Iowa.*" The resolutions in question are wanting in these enacting words of the Constitution.

It has frequently been held that without them the law is not and cannot be valid, nor will equivalent words satisfy the absolute requirement of the Constitution in this respect.

Again, the third and fourth resolutions require the Codifying Commissioners to perform certain duties during your present session, without making provisions for their taking effect immediately by publication: they will therefore have no binding efficacy until published by due course of law, when they will become negatory by loss of time, and ought not to encumber the Statute book.

The first and second resolutions, fixing the day of adjournment, and prohibiting under certain circumstances the introduction of new business after a given day, are intended only to prescribe a rule of action for the General Assembly itself—subject at any time to be changed or altered at the discretion of the two Houses. Yet they are inseparably coupled with other enactments having the force of law, and must necessarily be published and bound up with the laws of the State, long after they have expended their force and cease to have any operation.

This is a system of legislation I think had better not be indulged in, and therefore with great respect I return the resolutions with these my objections.

RALPH P. LOWE.⁴⁰

The objections of the Governor were sustained in the Senate by the decisive vote of thirty to one.⁴¹ Nevertheless, the Senate was determined to provide for the revision before the close of the session and on March 3, 1858, Senator John W. Rankin introduced Senate File No. 154, which was "a bill for an act providing for a revision of the Laws of Iowa, and the preparation of a Code of civil and criminal

⁴⁰ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, pp. 192, 193; also *Senate Journal*, 1858, p. 330.

⁴¹ *Senate Journal*, 1858, pp. 331, 332.

procedure".⁴² When this bill came up for consideration Mr. Samuel J. Kirkwood moved to have the words "and codify" inserted after the word "revise", and this amendment was adopted in the Senate.⁴³ After several other amendments, all proposed by Mr. Kirkwood, had been adopted, the bill was put to a vote and carried by the overwhelming majority of twenty-seven to four.⁴⁴

The above bill passed the House after slight amendment, by the vote of forty-five to eighteen,⁴⁵ and then returned to the Senate where, upon the motion of Mr. Kirkwood, the House amendments were unanimously agreed to.⁴⁶ This act, which received executive approval on March 11, 1858, reads as follows:

Section 1. *Be it enacted by the General Assembly of the State of Iowa,* That the Commissioners appointed by the Legislature to conform the laws of the State to the Constitution and perform other duties, are hereby directed to prepare a code of civil and criminal procedure, and revise and codify the laws of the State and have their report ready for publication by the first day of September, 1858.

Sec. 2. Immediately after filing their report by said Commissioners, the Secretary of State shall procure to be printed 500 copies of said report, and one month previous to the next session of the General Assembly whether the same be an extra or regular one, shall mail to each member thereof one copy of such printed report and shall retain the residue for the use of the General Assembly.⁴⁷

Though it thus appears that the Senate took the leading action later in the session relative to the revision of the laws, several original measures were also introduced in the

⁴² *Senate Journal*, 1858, p. 355.

⁴³ *Senate Journal*, 1858, p. 370.

⁴⁴ *Senate Journal*, 1858, p. 371.

⁴⁵ *House Journal*, 1858, pp. 547, 548.

⁴⁶ *Senate Journal*, 1858, pp. 424, 425.

⁴⁷ *Laws of Iowa*, 1858, Ch. 40, pp. 47, 48.

House earlier in the session, and one of these provided for the creation of the Revising Commission. During the first week of the session, on January 13, 1858, Mr. D. A. Mahoney of Dubuque offered the following resolution:

Resolved, That a Committee of seven be appointed by the Chair, whose duty it shall be to report to the House such alterations of and amendments to existing laws as will make them conform to the new Constitution.⁴⁸

This resolution was laid upon the table and nothing further seems to have been done with it. Nearly two weeks later, on January 25th, Mr. W. H. Seevers of Oskaloosa offered a resolution calling for the appointment of commissioners "to aid and assist the Judiciary Committee in drafting a code of civil and criminal procedure."⁴⁹ For this resolution Mr. E. E. Cooley of Decorah offered a substitute which provided that the commissioners "revise and amend the General Statutes of the State, and report the same, with a complete code of civil and criminal procedure on the ——— day of ————— 1858, to an extra or adjourned Session of the General Assembly."⁵⁰ These resolutions were to have been acted upon the following day, but owing to the election of a United States Senator, they do not appear ever to have been again considered.⁵¹

The next move on the part of the House was the introduction of two resolutions by Mr. Lincoln Clark of Dubuque on the morning of January 27th. The first of these resolutions called for a commission "of three persons, learned in the law, . . . whose duty it shall be to revise the laws now in force, to expurgate repealed laws, and to frame

⁴⁸ *House Journal*, 1858, pp. 37, 38.

⁴⁹ *House Journal*, 1858, p. 126.

⁵⁰ *House Journal*, 1858, p. 126.

⁵¹ At this election James W. Grimes was elected to succeed George W. Jones. — *House Journal*, 1858, pp. 128-131. See also Clark's *History of Senatorial Elections in Iowa*, Ch. V.

a system of laws in pursuance of the subjects and classification of the new Constitution". The second resolution provided that the system of laws embraced in the first resolution should contain certain specified features. Among these features was a provision for the establishment of a Commissioner's Court, the creation of a Court of Common Pleas, the establishment of the office of County Auditor, a provision calling for the organization of townships for the assessment of property and the collection of revenue, the separation of the offices of County Treasurer and Recorder, and the creation of the office of Supervisor of Roads.⁵²

Mr. W. H. Seevers immediately proposed a substitute which provided that the commissioners "aid and assist the Judiciary Committees of both Houses" in the work of revision.⁵³ This substitute was adopted by the vote of fifty-one to seventeen. Mr. Seevers then moved that the blanks in the resolution be filled by the names of William Smyth of Linn County, Winslow T. Barker of Dubuque County, and C. Ben Darwin of Des Moines County, which motion was adopted by the vote of sixty-two to six.⁵⁴ The Senate, as already noted, adopted this resolution after slightly amending it.⁵⁵

On the 4th of February Mr. C. J. L. Foster offered a resolution calling for the appointment of a committee of three "whose duty it shall be to report amendments to the Code of Iowa, to this House, in order that the same may be made to conform to the provisions of the New Constitution." This resolution was adopted and a committee consisting of C. J. L. Foster, D. A. Mahoney, and J. F. Ran-

⁵² *House Journal*, 1858, pp. 136, 137.

⁵³ *House Journal*, 1858, p. 137.

⁵⁴ *House Journal*, 1858, p. 138.

⁵⁵ *Senate Journal*, 1858, pp. 133, 134, 135.

dolph was appointed.⁵⁶ There is no evidence, however, that this committee ever performed any service.

On the same day Mr. George W. McCrary of Keokuk tendered a resolution instructing the Code Commissioners to confine themselves "to harmonizing" the laws to the new Constitution, "and preparing such additional acts as are necessary to carry out the same." This resolution did not meet with the approval of the House, however, and was not concurred in.⁵⁷

Five days later a resolution was introduced in the House by Mr. T. Walter Jackson calling upon the Commissioners to report their progress to the House.⁵⁸ Consequently, on the 23rd of February the Commission reported very fully upon its actions from the time of its appointment. It appears that the Joint Judiciary Committees had given instructions to the Commissioners to prepare acts in the following order:

- 1st. A Code of practice applicable to proceedings at law.
- 2d. A Chancery practice.
- 3d. A criminal practice.
- 4th. The adaptation of existing laws to the New Constitution.
- 5th. So changing the criminal law to the provisions of the New Constitution, that Justices may have some original jurisdiction.⁵⁹

From time to time the Code Commission sent to the House drafts of bills intended to be incorporated into the new Code when completed, and in some instances these bills were immediately passed by an overwhelming vote.⁶⁰

Late in the session Mr. B. F. Gue of Big Rock introduced House File No. 338, which provided for the printing and

⁵⁶ *House Journal*, 1858, pp. 207, 208.

⁵⁷ *House Journal*, 1858, p. 208.

⁵⁸ *House Journal*, 1858, p. 254.

⁵⁹ *House Journal*, 1858, pp. 360-363.

⁶⁰ Communications accompanying such bills are to be found in the *House Journal*, 1858, pp. 458, 477, 478.

binding of the report of the Commissioners and stipulated that it should be let "by contract with the lowest responsible bidder."⁶¹ This bill was recommended for passage by the Committee on Expenditures, but was defeated by the vote of twenty-three to thirty-four.⁶²

There appears to have been very little newspaper comment on the action taken by the Seventh General Assembly in providing for the revision of the laws. Indeed, there could be very little under the circumstances, as the need of such a work was apparent to all and the discussion of the minor details connected therewith was overshadowed by other more important questions of a national character.

THE CODE COMMISSIONERS

The gentlemen selected by the legislature met immediately after their appointment and organized for the work before them.⁶³ To Mr. Smyth was allotted the task of preparing the criminal code, to Mr. Darwin the law practice act, and to Mr. Barker the chancery act. It appears that C. Ben Darwin acted as Chairman of the Commission, and it was he who wrote the principal report to the legislature.⁶⁴

Charles Ben Darwin was one of the leading lawyers of Burlington, a man of liberal education and imbued with a fondness for original investigation. In connection with his work on the *Revision of 1860* he made a study of practically all the practice acts in force in the United States and later he also prepared a code of laws for the State of Tennessee. After removing from Iowa he was for a time

⁶¹ *House Journal*, 1858, p. 630.

⁶² *House Journal*, 1858, p. 758.

⁶³ Quotation from the *Burlington Hawk-Eye* in *The Tipton Advertiser*, Vol. VI, No. 51, Thursday, December 8, 1859.

⁶⁴ Mr. Darwin took the most active part of any of the Commissioners in this work. He wrote a large portion of the reports and the other Commissioners met at his office in Burlington when finishing their work. No direct statement, however, can be found that Mr. Darwin was officially elected Chairman.

United States District Judge for the Territory of Washington. He died at Napa Asylum near San Francisco in the spring of 1901.⁶⁵

The framer of the criminal code, William Smyth of Marion, was born in Tyrone County, Ireland, on the 3rd of January, 1824. Removing to Iowa from Pennsylvania in 1843, he studied law at Iowa City in the office of Judge J. P. Carleton and was admitted to the bar in 1846. In 1848 he opened an office at Marion, and became a leader in commercial affairs in Linn County. From 1853 to 1857 he served in the capacity of Judge of the Fourth Judicial Dis-

⁶⁵ Very little of a biographical nature is to be found concerning C. Ben Darwin. See *The Courts and Legal Profession*, Vol. I, p. 87; and the *Annals of Iowa*, Third Series, Vol. V, p. 160.

In *The Burlington Weekly Hawk-Eye* of Saturday, March 17, 1860, may be found sketches of the various members of the Commission written by "Linkensale", a correspondent. The following concerns Mr. Darwin:

"It would not be a bit fair to leave out pictures of the Code Commissioners from the very life-like and 'reliable' series of sketches which have from time to time appeared in 'these presents.' For, in the graphic style of Greeley, 'in the first place' the Code Commissioners are learned in the law — secondly, they are unanimously of opinion that they are good looking — and thirdly — they are.

"CHARLES BEN DARWIN, the author of the Civil Practice Act is known personally to many readers of the Daily Hawk-Eye. Let them not suppose, however, that his old familiar friend, that brown old coat of many a pleasant memory, adorns his body corporal whilst at the capital. He appears 'every day and Sunday too,' in a fine black suit, scrupulously neat. Go into the judges' room and you will find him by his desk, always at work and always standing. I have never seen him sitting down but once, and that was at the dinner table, though I did catch him a-napping one Sunday afternoon, with the Bible in one hand, at Chronicles 2:30, and Seward's big speech in the other. His orthodoxy, therefore, is not to be questioned, even whilst he is away from home. He is one of the most diligent, careful students I ever met. He gets up early every morning, takes a cold-water bath, and walks four miles before breakfast, after which, with short intermissions, he works away on the Code or revision of the laws till 9 or 10 o'clock at night. He is greatly respected here as a lawyer, and as much liked as a man. His remarks in the Senate and House in explanation of those portions of the Code in regard to which there was debate, have been clear, forcible, and able. Of an unsuspecting, generous, noble nature, it shall be no fault of mine if his merits are not universally appreciated."

See also *Proceedings of the Iowa State Bar Association*, Vol. VII, 1901, p. 80, for a short sketch of C. Ben Darwin.

trict. After serving on the Revising Commission he was appointed a member of the Committee on Legal Inquiry and he also assisted Governor Kirkwood in selling bonds during the early part of the Civil War.

In 1862 Judge Smyth received a commission as Colonel of the Thirty-First Iowa, but after a year's service he was forced to resign on account of ill health. In 1868 he was elected Congressman from Iowa and died while serving in that capacity on September 30, 1870.⁶⁶

The third member of the Commission was Mr. Winslow T. Barker of Dubuque. Judge Barker presided over the Delaware County Circuit Court from 1869 until 1872 and represented his district in the House of Representatives in the Sixth and Eleventh General Assemblies.⁶⁷ Dr. Robert

⁶⁶ For an extended biography of Judge Smyth, see *History of Linn County, Iowa* (1878); *Portrait and Biographical Album of Linn County, Iowa*; and Gue's *History of Iowa*, Vol. IV, p. 248. Judge Smyth's name is also to be found spelled Smythe and Smith.

"JUDGE SMYTH, of Linn county, has prepared the Criminal Code, with the most of the provisions of which Mr. Barker agrees, but dissents as to one or two principles which Messrs. Smyth and Darwin approve. The Judge is a fine lawyer, fine talker, and fine fellow generally — very sociable with his friends, but rather distant to those with whom he has no acquaintance. His *physique* is unexceptionable — tall, rather slenderly but compactly built, with a fine head, he is such a man as the ladies like to look upon frequently. But I suspect they don't get the chance. He is a hard student, but during hours of relaxation talks much with his friends, with whom he is immensely popular." — "Linkensale" in *The Burlington Weekly Hawk-Eye*, Saturday, March 17, 1860.

⁶⁷ *Iowa Official Register*, 1911-1912, pp. 72, 145.

"Mr. BARKER (pray don't have it printed Baker) is a trump — a Democratic right bower—a gentleman of manly independence—a lawyer of fine attainments—a scholar whom now, henceforth, and all the time I shall delight to honor, never, however, forgetting to pray that he may be redeemed, regenerated, and disenthralled from the bondage of modern Democracy. He's none of your 'cussed go-it-blind Democrats', though, but as independent in politics as he is in other respects. I do not know but I respect *his* Democracy, after all, for it is of the old fashioned sort, not known at Washington. Mr. Barker makes friends with all who know him. They respect his abilities and his attainments and they like him hugely for his many genial and amiable qualities. If any body asks me to affirm that he is very *emphati-*

I. Thomas of Dubuque served as the clerk of the Commission and of the Revision Editor.⁶⁸

THE REPORT OF THE COMMISSIONERS⁶⁹

After having written the various acts as outlined above the Commissioners met and went over the reports in joint

cally good-looking, I beg to be 'excused' — upon my conscience." — "Linkensale" in *The Burlington Weekly Hawk-Eye*, Saturday, March 17, 1860.

In *The Dubuque Weekly Times*, Vol. XVIV, No. 1, Wednesday, January 10, 1872, may be found an extended obituary notice of Judge William T. Barker.

⁶⁸ "DR. THOMAS, who, as well as Mr. Barker, is from Dubuque, is Secretary to the Commissioners, and Counsellor Pleydell, though he might have had a clerk who could drink more ale *and* write, never saw one who could write more *without* drinking ale. The Doctor is always at his post, and performs to all perfection the arduous duties devolving upon him. He was one of my first acquaintances here, but I trust that he will deem it no bad judgment when I say that he is a man who wears well, and whom, the better you know, the more you like. The Doctor is exceedingly popular, and is a great favorite with the fair sex, especially if they be 'vidders.' Old Toney Weller's doctrine has no response in his heart — nor in mine." — "Linkensale" in *The Burlington Weekly Hawk-Eye*, Saturday, March 17, 1860. See also *Revision of 1860*, Preface, pp. v, vi.

⁶⁹ The two reports — the report containing the criminal code and the report containing the civil practice act — are very rare. The copy used by the writer was kindly loaned by Mr. A. J. Small from the State Library at Des Moines. The reports are bound together in one volume and are probably the only copies extant. The pages are ordinary octavo in size and the work gives evidence of great hurry in its preparation. On the first page of each report appears the name "Ed Wright" in bold handwriting. A card pasted on the cover states that Mr. Wright, who represented Cedar County in the House during the Sixth, Seventh, and Eighth General Assemblies, presented these valuable reports to the Historical Department at Des Moines.

As evidence that the work was done in a hasty and careless manner the following clipping and comments thereon are taken from *The Iowa Citizen* (Des Moines), Wednesday, February 8, 1860:

"We have received a copy of the report of the Code Commissioners, which has been printed for the use of the Legislature. It makes a volume of about 350 pages. We have had no opportunity of examining it as yet, and shall not venture an opinion of its merits. The printing, however, is abominable, as any one can see at a glance. — *Hawkeye*.

"Avast there, Mr. Hawkeye. We hardly expected any such slur from you. You have certainly a copy of the Code Commissioners Report that was not printed at this office; or you have got one that justifies no such censure as that embodied in the paragraph quoted above. The type in which the report was set, is not new; and shows no such clear outlines as new type

session.⁷⁰ The report was then presented to the General Assembly after being printed for its action thereon. An act of March 11, 1858, provided that the Secretary of State should have five hundred copies of this report printed and send a copy to each member of the legislature one month previous to the meeting of the General Assembly.⁷¹ However, it seems that the report was delayed until after the opening of the Eighth General Assembly.⁷²

The printed report consists of two parts and is a very rare book. The first part contains the report on criminal practice, the title page of which reads as follows:

does. The paper is very poor; the poorest the State has ever used. Its color is bad and its texture is little better than common news. But as the document is for temporary use only; it was not deemed necessary by the State officers,—who are trying to practice a rigid economy,—to purchase a better article. . . . Every printer knows that it is impossible to make fine work, on common newspaper.”

⁷⁰ *Report of the Code Commissioners on the Civil Practice Act*, p. 344. See also *The Tipton Advertiser*, Vol. VI, No. 51, Thursday, December 8, 1859.

⁷¹ *The Revision of 1860*, Preface, p. iii.

⁷² In commenting upon this delay the *Democratic Clarion* (Bloomfield), Vol. III, No. 16, Wednesday, January 25, 1860, makes the following remarks:

“There will be a great deal of business before the Legislature, the Commissioners appointed to revise the Code have not yet reported, but will do so next week; the law required the Code to be in the hands of the members elect one month before the meeting of the Legislature, but like everything else in Republican misrule, they are yet in the employ of the State at three dollars per day.”

In an editorial on Wednesday, January 25, 1860, Editor John Teesdale of *The Iowa Citizen* (Des Moines), stated: “The Report of the Code Commissioners will soon come before the Legislature; and the legal fraternity of that body, feel more deeply interested in it than in any question likely to come up. They are for giving it precedence, and some of them go so far as to censure the State Printer, because he obeyed the injunctions of law, and gave precedence to the reports of State officers and State Institutions, as they came into his hands.—Gov. Lowe, in his message expressed himself quite favorably in regard to the Report of the Code Commissioners; and the impression of the legal fraternity seems to incline the same way, so far as a knowledge of the character of the Report has extended. This would seem to augur, if it means anything, more prompt action in the Legislature than has been generally anticipated.”

See also *Daily Iowa State Register* (Des Moines), Friday, January 13, 1860.

THE CODE
OF
CRIMINAL PRACTICE
OF THE
STATE OF IOWA.

REPORTED BY THE CODE COMMISSIONERS TO THE
EIGHTH GENERAL ASSEMBLY

PREPARED BY WILLIAM SMYTH, ONE OF THE COMMISSIONERS.

DES MOINES, IOWA :
JOHN TEESDALE STATE PRINTER
1860.

This part of the report, however, did not meet with the unanimous approval of all the Commissioners, as W. T. Barker thought that section 356 of the report which limited the counsel for the State to one argument before the trial jury and giving the closing argument to the defendant's counsel in all cases, should not prevail.⁷³ Moreover, Mr. Barker did not approve of the chapter on appeals and he proposed a substitute, which as he declared "is mainly the existing law, revised and amended."⁷⁴

Following Mr. Barker's remarks and his proposed substitute bill the majority report of the Commissioners took up the provisions from which Mr. Barker dissented and discussed them quite fully. The Commission declared that "it was the intention of the Commission, to have accompanied the Act herewith reported to the General Assembly, with a statement of the changes which it proposes to introduce into the present Criminal Practice, and the reasons which operated on the minds of the Commissioners and

⁷³ *Report on the Code of Criminal Practice*, 1860, pp. 95-97.

⁷⁴ *Report on the Code of Criminal Practice*, 1860, pp. 97, 98.

induced them to recommend such changes; but the already advanced period in the session, and the pressing demands of other more important matter on the State Printer, admonish us to forbear, and at once submit the Act as it is, hoping that its provisions are so intelligible, that they can be understood."⁷⁵

This report on the *Code of Criminal Practice* contains much new matter not found in the *Code of 1851*, but scores of sections are taken directly from the latter work. There are one hundred and twenty pages, ninety-two of which contain the proposed act and are without notes or references of any kind.

The second part of the report embraces three hundred and forty-four pages and contains the practice act as prepared by Mr. Darwin.⁷⁶ The title page of this report reads:

REPORT
OF THE
CODE COMMISSIONERS,
TO THE
EIGHTH GENERAL ASSEMBLY OF THE STATE OF IOWA.

DES MOINES, IOWA.
JOHN TEESDALE, STATE PRINTER.
1859.

As in the case of the criminal code, a great many sections of the *Code of 1851* have been copied verbatim and made a part of the report containing the practice act. When this report was submitted to the legislature it passed with very little amendment.⁷⁷ A few sections in the report, however, are not to be found in the completed work, and among such may be mentioned chapter three of the report which pro-

⁷⁵ *Report on the Code of Criminal Practice*, 1860, p. 93.

⁷⁶ *Report of the Code Commissioners on the Civil Practice Act*, p. 3.

⁷⁷ *Revision of 1860*, Preface, p. iii.

vides for a reporter of the Supreme Court.⁷⁸ Furthermore, in some instances chapters in the completed work have their order different than those in the report, or contain additional matter. On the other hand some entire chapters in the report are taken bodily from the *Code of 1851* and are not changed in the least.⁷⁹

The most interesting part of this report is to be found in the *Remarks* which follow the draft of the act.⁸⁰ The writer of the report states that it is written chiefly for the unprofessional reader.⁸¹ He then describes the two kinds of law, adjective and substantive, and shows that the act submitted contains adjective law for the most part. This statement is followed by an article entitled *A Glance At The History Of Pleading*, which traces the development from the hard and fast forms of the old common law to the all embracing petition of the modern code pleader.⁸² It describes the absurdities to which the old method of pleading went and then shows the steps taken by New York to remedy such evils.⁸³

In speaking of the introduction of the reformed method of pleading into Iowa the report states :

We have said this system was introduced into Iowa in 1851. It forms the main features of the "Part Third," of our Code of that year. There were some misfortunes attendant upon its introduction here. 1st. There was no attendant report to tell us of its origin — to point out its aims, or to guide to sources of illustration.

⁷⁸ An act providing for a Supreme Court Reporter was approved on April 2, 1860, and took effect May 9, 1860.— *Revision of 1860*, p. 21.

⁷⁹ Among such chapters are the ones on Nuisance, Waste, and Trespass; Official Securities and Fines; Habeas Corpus; Changing Names; and Judgment Liens.— *Report of the Code Commissioners on the Civil Practice Act*, pp. 149, 154, 165.

⁸⁰ *Report of the Code Commissioners on the Civil Practice Act*, pp. 175, 176.

⁸¹ *Report of the Code Commissioners on the Civil Practice Act*, p. 175.

⁸² *Report of the Code Commissioners on the Civil Practice Act*, p. 177 et seq.

⁸³ *Report of the Code Commissioners on the Civil Practice Act*, p. 189.

It hence followed that many, of both the bar and bench, not acquainted with the latest legal thought, deemed the Code a startling innovation, and without example as a departure from precedent. 2d. That while borrowed almost entirely from New York, except some parts which we think clearly improvements, even on the New York system, yet the terms of the parent act were so far departed from as to make it difficult even to those well versed in both acts, and almost impossible for others to apply the judicial illustration which the New York act has secured, to the illumination of our own. Besides, this act had not then attained its present extended popularity, nor won its way to the general acceptance of so many States and Territories.

Then, too, in the older cities of the State, among the old men, the oldest and best lawyers, who were worked gray in the profession, there was a strong cleaving to the friendly old forms in the use of which they did, or were supposed to excel. It was hard for such men to forego a superiority, well and laboriously earned, and to be compelled to begin again by the side of the youth just immerging into the legal arena, with whose sweat, and blood, and scars, these veterants were so gallantly mantled. For these men had not learned then, what they have since — that the new system was the old system shorn only of its nonsense, and that no lesson learned in the logic or philosophy of the old, but applied as well to the new.

Then, too, were the mechanical men, who never went below the surface to find the reason of a thing, who lived and breathed, in lifeless forms. There was also the fearfully conservative man, who thought that his long buried ancestors knew much better, not knowing his surroundings, what was best for him amid such surroundings, than he possibly could — and among them all, and rather for the reasons we have given, it turned out that the Code was not welcomed as warmly as it had the right to be.⁸⁴

After describing the confusion existing between law and equity procedure more fully the writer declares that “these things being thus, the Code being in many applications doubtful, and in some having clearly failed to secure its

⁸⁴ *Report of the Code Commissioners on the Civil Practice Act*, pp. 190, 191.

The Commissioner criticises the case of *Claussen v. Lafranze*, 4 Greene 224, for stating that “chancery was not included in the reform of the Code”.

purpose, the General Assembly imposed upon us, the duty, among other things, of making a code of civil practice."⁸⁵

A vast amount of material appears to have been gone over by the Commission, for it states that in its investigations "all the reports made by former commissioners, engaged in the same duty, have been consulted. The codes of all the States we have before mentioned, have been before us, as well as all the reported decisions on the same — the English practice Acts of 1852, and 1854, and the last expressions of English reform in Chancery — the codes of Louisiana and France, which by the way, in the inception of this reform movement, contributed much to the system, as well as all the works on the new practice in the States and in England, and the latest English works on evidence. Distinguished legal men have been also by the writer hereof, consulted by letter, as to the practical working among them of the main features introduced into this act, and the experience thus collected will be presented in its proper place. . . . We cannot consent to return again to the dead mumblements of the past, and we know that neither the people, nor the bar, nor the bench, would allow it."⁸⁶ Indeed, it seems that Mr. Darwin had bought a number of books at his own expense, and had borrowed others, the State Law Library at that time not being as well equipped as it is to-day.⁸⁷

There are four "central ideas" to be found in the new act proposed. They were "uniformity in the *pleadings* of law and equity, with a possible uniformity throughout, but a right of dissimilarity in the mode of proof, trial, and ap-

⁸⁵ *Report of the Code Commissioners on the Civil Practice Act*, p. 195.

⁸⁶ *Report of the Code Commissioners on the Civil Practice Act*, p. 195.

⁸⁷ For reports concerning the condition of the State Library, see *Senate Journal*, 1858, pp. 234-236. In the *Daily Iowa State Register* (Des Moines), Saturday, March 10, 1860, Mr. Darwin states that he collected at his own expense a large number of reference works.

peal"; verification of pleadings; early arrest of pleadings; and the allowing of a litigant party to make himself a witness.⁸⁸ Each feature is elaborately discussed and the opinions of a large number of eminent jurists are printed in commendation of the methods proposed.⁸⁹ In concluding his argument in favor of uniformity of procedure Mr. Darwin states:

Thought, in every other department of science, while it borrows from, refuses to bow in servile submission to the past; and in law only, and that in but a State or two, is bound down and gagged, and sitting with brow unlit by the truth and glory of the coming time. Let not our own young State in everything else so eminent, and bounding on like a young giant refreshed with wine, to the goal of her great destiny, be longer crippled by this load of effete nonsense, not imposed by, but accepted, from the dead centuries.⁹⁰

Mr. Darwin further wrote that "it is fair to Mr. Barker, to say that, to that portion of this argument, going beyond what is needed to sustain *our act*, he does not stand committed."⁹¹

Strong arguments are also given on the other features of the proposed act, namely: verification of the pleadings, early arrest of pleadings, and allowing a litigant party to make himself a witness.⁹² These, with the addition of uniformity in procedure, were declared to be the only great changes from the existing law. The Commissioners, however, stated that "considerable change has been made in phraseology only to secure better the *intention*".⁹³

⁸⁸ *Report of the Code Commissioners on the Civil Practice Act*, p. 196.

⁸⁹ *Report of the Code Commissioners on the Civil Practice Act*, p. 292.

Mr. Darwin states that over six hundred letters were written to Iowa lawyers, asking for suggestions on the proposed act.

⁹⁰ *Report of the Code Commissioners on the Civil Practice Act*, p. 236.

⁹¹ *Report of the Code Commissioners on the Civil Practice Act*, p. 237.

⁹² *Report of the Code Commissioners on the Civil Practice Act*, pp. 237, 258, 260.

⁹³ *Report of the Code Commissioners on the Civil Practice Act*, p. 291.

The report is followed by *Remarks on Particular Sections*, which in many instances are very radical in tone.⁹⁴ Commissioner Darwin makes a caustic criticism of the opponents to codification⁹⁵ in speaking of section 18 which reads, "The rule of the common law that statutes in derogation thereof are to be strictly construed, has no application to this Code. Its provisions and all proceedings under it, shall be liberally construed with a view to promote its object and assist the parties in obtaining justice."⁹⁶ On section 458 of the report which reads, "The Court may restrict the time of any attorney in any argument to itself, but shall not do so in any case before a jury,"⁹⁷ Mr. Darwin was also very bitter in his criticism.⁹⁸ It was termed by him a "gag law", and he further declared that "any exercise of it is dangerous."⁹⁹ In closing his argument against this section, which was placed in the proposed act against his wishes, Mr. Darwin declared that the county courthouse is the school house of the masses, and that "the lawyer is the priest who more than the judge announces those lessons. His voice, even if it be, as sometimes, raised to misapply them, trumpets out these grand truths which form the granite ribs on which rests our social liberty and life. . . . He seizes on wrong and crime and lashes them naked into ignominy, banishment, or dungeons. . . . You have broken the chief altar, and silenced and ejected the priest, and your temple of justice, has become a mercenary shamble where profit and loss is selfishly bartered, while shivering *virtue* cries aloud, unheeded, in the streets."¹⁰⁰

⁹⁴ *Report of the Code Commissioners on the Civil Practice Act*, p. 293.

⁹⁵ *Report of the Code Commissioners on the Civil Practice Act*, pp. 293, 294.

⁹⁶ *Report of the Code Commissioners on the Civil Practice Act*, p. 7.

⁹⁷ *Report of the Code Commissioners on the Civil Practice Act*, p. 65.

⁹⁸ *Report of the Code Commissioners on the Civil Practice Act*, pp. 320-324.

⁹⁹ *Report of the Code Commissioners on the Civil Practice Act*, p. 321.

¹⁰⁰ *Report of the Code Commissioners on the Civil Practice Act*, p. 324.

In concluding this report Mr. Darwin acknowledged aid from Hon. Dudley Field of New York, William Price of Maryland, and W. R. Wells of Missouri, who were or had been engaged in similar work in their respective Commonwealths.¹⁰¹ He also stated that the report was not written until the act had been approved by the whole Commission, only four weeks before the beginning of the session, when the report was sent at once to the printer.¹⁰² As a consequence, the writer declared, "the report was then rapidly dashed off in the fear that it might be wanted before ready. It thus also results that a thousand pages of study and notes on this subject, which should have been condensed into less bulk than this report, in its present shape, cannot be appropriated, as was designed, to the illustration hereof."¹⁰³

In addition to the two reports above described there was yet a third report presented, together with a draft for a "Revision of the Laws". A portion of this report is to be found in the preface to the *Revision of 1860* and is not nearly as extensive as the other two.¹⁰⁴ From it may be learned the method adopted by the Commissioners as stated in the following paragraph:

This revision which we offer you, does not need to be enacted, as it is the law as it exists already. We add nothing to the law — subtract nothing therefrom — make no change of word or phrase — merely of the arrangement of the existing law. We simply put into one chapter what we think belongs to one chapter. We indicate what act and section thereof, each section comes from — the book where it was formerly found, and when it was passed and took effect.¹⁰⁵

¹⁰¹ *Report of the Code Commissioners on the Civil Practice Act*, p. 344.

¹⁰² *Report of the Code Commissioners on the Civil Practice Act*, p. 344.

¹⁰³ *Report of the Code Commissioners on the Civil Practice Act*, p. 344.

¹⁰⁴ *Revision of 1860*, Preface, pp. iv, v.

¹⁰⁵ *Revision of 1860*, Preface, p. v.

Besides stating the method pursued by the Commissioners, this report presents an excellent summary of the progress of codification in the United States up to 1860.¹⁰⁶ It states the decision of the Commission to follow the arrangement as laid down in the *Code of 1851* since "that method is so good, and so well understood, that a change would neither be sustained by reason, nor by the approval of the people. The method or classification of the Code has very illustrious prototypes, and among the States there are several Codes which use the same method, as for example, those of Virginia, Alabama, Delaware, etc."¹⁰⁷

These three reports did not bring forth the criticism that the *Report on the Code of 1851* incurred, and they were substantially enacted as presented.¹⁰⁸

LEGISLATIVE ACTION UPON THE REPORT

The Eighth General Assembly of the State of Iowa convened at Des Moines on January 9th, 1860.¹⁰⁹ Probably the most important work of the session was the consideration of the reports of the Code Commissioners, although other very important measures were considered.¹¹⁰

¹⁰⁶ For instructive historical articles on the progress of codification in the United States see *A Revival of Codification*, by Francis M. Burdick in 10 *Columbia Law Review* 118, February, 1910; and *Codification in The Law Bulletin*, State University of Iowa, No. 22, p. 16.

¹⁰⁷ *Revision of 1860*, Preface, p. v.

¹⁰⁸ *Revision of 1860*, Preface, p. iii. See also Withrow and Stiles' *Digest of the Decisions of the Supreme Court of Iowa*, Preface, p. xviii.

In speaking of the action of the Senate upon the reports, a correspondent to *The Washington Press* (Washington, Iowa), Wednesday, March 14, 1860, writes:

"The amendments are mostly of a mere correctionary character. In its main features the Code remains untouched. The most important amendment is in relation to verification of Pleas. On this the committee (Judiciary) were divided and agreed to a compromise. The compromise is, that either party may verify any pleading he may choose, and then all subsequent pleadings by either party shall be verified."

¹⁰⁹ *House Journal*, 1860, p. 1.

¹¹⁰ "The most important work of the Eighth General Assembly was the con-

In his biennial message Governor Lowe reported that:

The commissioners appointed to prepare a code of civil and criminal procedure, and to revise and codify the laws of the State, will spread before you the work of their hands, which should engage your attention in the early session, whilst the several committees are preparing other measures for your consideration.

The very cursory reading which I have been able to give to a portion of the civil practice act, made a favorable impression upon my mind, and it is to be hoped, upon a full and careful examination by you, that it will be found quite acceptable, and that you will not feel it necessary to make many changes in the same.¹¹¹

As the reports of the Commissioners were not ready at the time of the convening of the legislature, their consideration was of necessity postponed until near the middle of the session. On the last day of January, Mr. Nathaniel B. Baker in the House of Representatives "moved to take up the Code of Civil Practice, in committee of the whole . . . and each day thereafter till it is disposed of."¹¹² This motion was amended, however, upon the motion of Thomas W. Claggett and it was referred to the Committee on the Judiciary.¹¹³ The following day Mr. J. H. Williams introduced a concurrent resolution instructing the Secretary of State "to deliver to the Code Commissioners fifty copies of their report on civil practice."¹¹⁴ This action

sideration of the report of a commission selected by the previous Legislature to revise and codify the laws of the State. Their elaborate work was carefully reviewed, and, with some amendments, enacted and published as the 'Revision of 1860.' W. H. F. Gurley, of Scott County, chairman of the committee of ways and means, in the House, framed new revenue laws which with few changes, remained on the statute books for more than a quarter of a century, working a great reform in the collection of taxes."—Gue's *History of Iowa*, Vol. II, p. 32.

¹¹¹ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, p. 179.

¹¹² *House Journal*, 1860, p. 175.

¹¹³ *House Journal*, 1860, p. 175.

¹¹⁴ *House Journal*, 1860, p. 181.

was approved by the Senate on the 11th of February.¹¹⁵ On the same day, Mr. Rush Clark of Johnson County presented a resolution calling on the Code Commissioners "to transmit a copy of their report on criminal practice, to each Supreme and District Judge, and each District Attorney of the State, as early as practicable."¹¹⁶

On the 17th of February the Judiciary Committee presented a partial report on the proposed Civil Practice Act and recommended less than a score of changes, most of them being of trivial importance, as for instance, the transposition of words or corrections in grammar.¹¹⁷ A week later a further report was made, the amendments, however, being of the same nature as in the previous report.¹¹⁸

During the last week in February, 1860, Mr. Thomas W. Claggett offered a resolution to postpone the consideration of the Code until the following session of the General Assembly, but it was laid on the table.¹¹⁹ Mr. Rush Clark of Johnson also presented a petition from seventeen citizens of the Eighth Judicial District against the passage of the new Code.¹²⁰ On March 6th, however, the point was reached where Mr. Henry C. Caldwell, Chairman of the Judiciary Committee, offered the following resolution:

That senate file number 126, an act to establish a Code of Civil Practice, be made the special order for Thursday, 8th inst., at 2 o'clock, P. M., and that it remain the special order for each afternoon thereafter, until the same is disposed of.¹²¹

This resolution was adopted as was also one tendering

¹¹⁵ *House Journal*, 1860, pp. 227, 228.

¹¹⁶ *House Journal*, 1860, p. 231.

¹¹⁷ *House Journal*, 1860, p. 254.

¹¹⁸ *House Journal*, 1860, pp. 288-290. A third report from the Committee on the Judiciary can be found in the *House Journal*, 1860, pp. 384-387.

¹¹⁹ *House Journal*, 1860, p. 302.

¹²⁰ *House Journal*, 1860, p. 287.

¹²¹ *House Journal*, 1860, p. 372.

the Commissioners the privilege of seats on the floor and the permission to speak on the act under discussion.¹²² On Tuesday, the 13th of March, the Committee of the Whole House reported back the Senate bill "with sundry amendments, and recommended its passage".¹²³ The following day the bill passed the House by the vote of forty-nine to thirty-two.¹²⁴

Five days later the House was informed that the Senate had passed the act for a Criminal Code whereupon Mr. James H. Williams offered the following resolution which was adopted:

That senate file number 153 be made the special order for tomorrow afternoon and every afternoon thereafter until the same be disposed of; and that the commissioners be and are hereby invited to occupy a place on this floor, and participate in the discussion of the same.¹²⁵

When this act was voted upon on the 20th of March it passed the House by the vote of forty-four to thirty-two.¹²⁶

Having passed both acts it became important that provision should be made for publication and for the payment of the Commissioners. On the 28th of March Mr. Alvah H. Bereman of Mt. Pleasant introduced a bill which called "for the publication of the Revised Statutes of 1860".¹²⁷ Mr. Henry C. Caldwell proposed a substitute for this bill which was adopted.¹²⁸ Amendments were made to this substitute bill in the Senate, but they were all concurred in by the House.¹²⁹

¹²² *House Journal*, 1860, p. 372.

¹²³ *House Journal*, 1860, p. 421.

¹²⁴ *House Journal*, 1860, pp. 426-430.

¹²⁵ *House Journal*, 1860, p. 454.

¹²⁶ *House Journal*, 1860, pp. 464, 465.

¹²⁷ *House Journal*, 1860, p. 560.

¹²⁸ *House Journal*, 1860, pp. 617, 618.

¹²⁹ *House Journal*, 1860, p. 652.

In many respects the action in the Senate was more important than the action of the House, since both bills providing for the adoption of the reports originated in the upper house. On January 31, 1860, Senator M. L. McPherson moved that the report of the Code Commission be taken up and referred to the Judiciary Committee, which was ordered.¹³⁰ A week later Mr. David Hammer offered a resolution in which the Judiciary Committee was requested to report "immediately, on the report of the Code Commissioners", and be discharged from any further consideration thereof.¹³¹ This resolution was laid on the table and appears to have been of no further significance.¹³²

On February 27, 1860, the Senate was ready to consider the report of the Commissioners and Mr. John W. Rankin of Lee County offered the following resolution which was adopted:

Resolved, That the Code Commissioners be invited to take a seat on the Senate floor, while the Senate is considering the Code and amendments in Committee of the Whole.¹³³

At two o'clock the Senate resolved itself into a Committee of the Whole Senate for the consideration of the report.¹³⁴ Two days later on the 29th of February the Judiciary Committee reported back Senate File No. 126, which provided for the establishment of a Code of Civil Practice, with sundry amendments, and the majority recommended that the bill be passed.¹³⁵ Furthermore, the Committee of the Whole Senate, on the same afternoon, recommended the passage of the act.¹³⁶

¹³⁰ *Senate Journal*, 1860, p. 155.

¹³¹ *Senate Journal*, 1860, p. 209.

¹³² *Senate Journal*, 1860, p. 209.

¹³³ *Senate Journal*, 1860, p. 331.

¹³⁴ *Senate Journal*, 1860, p. 333.

¹³⁵ *Senate Journal*, 1860, p. 346.

¹³⁶ *Senate Journal*, 1860, p. 349.

When the bill came up for consideration a large number of the amendments made by the last named committee were concurred in.¹³⁷ Several amendments proposed by individuals, however, did not meet the same fate, but were lost.¹³⁸ After much discussion concerning these amendments the bill was put to a final vote and adopted by the vote of twenty-eight to twelve.¹³⁹

On the 10th of March the bill for an act to establish a Code of Criminal Practice was reported back to the Senate from the Judiciary Committee by Mr. John W. Rankin.¹⁴⁰ After having been considered by the Committee of the Whole Senate the bill was passed by the vote of twenty-three to eighteen on March 16, 1860.¹⁴¹

The next question concerning the Code to engage the attention of the Senate was the compensation of the Commissioners. On March 21st Mr. William F. Coolbaugh of Burlington introduced a bill to pay the Commissioners.¹⁴² After being referred to the Committee on Ways and Means, and having been by them amended, it was passed by the Senate on the 27th of March.¹⁴³

The question of printing and distributing the *Revision of 1860* appears to be a complicated question in the Senate, and no less than four different bills were introduced.¹⁴⁴ Mr. Alvin Saunders presented a bill which provided for "the revision of the laws of this Session into the revision presented by the Commissioners, and also for superintend-

¹³⁷ *Senate Journal*, 1860, pp. 360-366.

¹³⁸ *Senate Journal*, 1860, pp. 366-370.

¹³⁹ *Senate Journal*, 1860, pp. 378-383.

¹⁴⁰ *Senate Journal*, 1860, p. 422.

¹⁴¹ *Senate Journal*, 1860, p. 485.

¹⁴² *Senate Journal*, 1860, p. 533.

¹⁴³ *Senate Journal*, 1860, pp. 620-622.

¹⁴⁴ These bills were House Files Nos. 369 and 395, the substitute for House File No. 369, and Senate File No. 222.

ing the publication, indexing and distribution of the same."¹⁴⁵ This bill passed the Senate by a vote of twenty-seven to four and went through the House without amendment.¹⁴⁶

When the House bill which provided for the printing of the Code reached the Senate, it was amended and passed. The House concurred in the Senate's amendments and the bill became a law.¹⁴⁷ A joint resolution introduced in the House calling for the distribution of the Code and laws to members of the legislature appears to have been lost.¹⁴⁸

The last bill or act concerning the *Revised Statutes of 1860* took the form of a concurrent resolution and it received the sanction of both houses. This resolution was fathered by Mr. A. O. Patterson of Muscatine County and read as follows:

Resolved, By the Senate, the House concurring, That it is hereby made the duty of the Secretary of State, to furnish one copy of the "Revised Statutes" of Iowa to each member of the General Assembly, as soon as they are published; also, purchase and deliver one copy of the Iowa Digest (by Dillon) of the Supreme Court of this State, to each of said members.¹⁴⁹

For their labor in preparing the reports the Commissioners received the sum of six thousand seven hundred and fifty dollars. Of this amount Mr. Darwin received three thousand dollars, Mr. Smyth and Mr. Barker each received the sum of fifteen hundred dollars, while seven hundred and fifty dollars were allotted to the clerk of the Commission, Dr. R. I. Thomas.¹⁵⁰

¹⁴⁵ *Senate Journal*, 1860, p. 640.

¹⁴⁶ *Senate Journal*, 1860, pp. 726, 727, 735.

¹⁴⁷ *Senate Journal*, 1860, p. 740.

¹⁴⁸ *Senate Journal*, 1860, p. 703.

¹⁴⁹ *Senate Journal*, 1860, pp. 709, 710, 714.

¹⁵⁰ *Laws of Iowa*, 1860, p. 52.

THE PRINTING OF THE REVISION OF 1860

The law which provided for the printing of the *Revision of 1860* was approved on April 3, 1860.¹⁵¹ By this act the Governor, Secretary of State, Auditor of State, Treasurer of State, and Charles Ben Darwin were appointed a commission to contract for the printing of the work which was to be known as the "Revised Statutes, of Iowa". The law further provided that this volume should "contain all laws of the State of a general nature in force, or provided for by the present General Assembly, to be in force during its present session and subsequent to its adjournment". One of the provisions prohibited the letting of the contract to any "person or persons who are not bona fide residents of the State of Iowa".¹⁵²

Section two of this act refers to a matter which gave rise to some newspaper comment at the time. It reads:

The Commissioners hereby appointed shall contract for the printing at the end of each chapter of said volume a synopsis, prepared by Charles Ben Darwin, of all prior laws on the same subject, beginning with those of the State of Michigan, which are in force in the State of Iowa, and continuing down to the present time, stating when each took effect, and when it was repealed, and referring to the book and pages where the original acts are found; also, giving notes and references under each chapter, to all decisions made by the Supreme Court of this State, on the same or any prior law of the same kind; also giving notes and references to the decisions of the highest Courts of those States, from whose laws sections of the Code of civil practice have been taken; also to contain an index to the contents of the volume. And the Contractor for such printing shall furnish at his own expense the said synopsis notes and references; *Provided*, said notes and references shall not add more than twenty-five cents to the cost of each volume of said book, exclusive of material and printing.¹⁵³

¹⁵¹ *Laws of Iowa*, 1860, p. 119.

¹⁵² *Laws of Iowa*, 1860, p. 120.

¹⁵³ *Laws of Iowa*, 1860, Section 2, p. 120.

This provision caused considerable criticism. It appears that prior to his appointment to the Code Commission, Mr. Darwin had prepared a synopsis of the Iowa laws and had made arrangements with Mr. Corse of Burlington for its publication. When he was appointed to the Code Commission, however, this project was dropped by Mr. Darwin. Corse and Canfield, a publishing firm, approached Mr. Darwin during the latter part of the session of the Eighth General Assembly and secured this material, consisting of the synopsis of laws and annotations to code sections, on "certain contingencies". Desiring to reimburse himself for the outlay in purchasing books and preparing this material, Mr. Darwin accepted the offer of Corse and Canfield.¹⁵⁴

Certain printers and publishers in the State thought that such an act was an attempt on the part of Darwin, and Corse and Canfield, to compel the legislature to purchase the notes and award the contract for printing the Code to Corse and Canfield, and some very caustic comments were published. Editor John Teesdale of the *Daily Iowa State Register* declared:

It is rumored that Mr. Darwin has disposed of his work to Messrs. Corse and Canfield, and that that fact is now pressed as an irresistible reason for giving the publication of the Code to those gentlemen. This looks very much like an effort to force the Legislature to terms—to induce it to an act of great injustice to an officer of whom it requires the establishment of an office at the Capitol, and a preparation to do his work. . . . The scheme they have devised, may be a very shrewd one; but they will find that the Legislature is not to be forced into giving them a piece of work, upon which they have not the shadow of a claim; nor yet into the payment of an exorbitant price for matter that can be dispensed with, without detracting from the value of the new code.¹⁵⁵

¹⁵⁴ The *Daily Iowa State Register* (Des Moines), Vol. I, No. 54, Saturday, March 10, 1860.

¹⁵⁵ The *Daily Iowa State Register* (Des Moines), Vol. I, No. 52, Thursday, March 8, 1860.

A correspondent to the *Burlington Hawk-Eye* wrote from Des Moines as follows:

I notice some lobbying for the printing of the new Code. Several propositions have already been made. But it seems to me that any attempt of this kind, on the part of the State to speculate out of the copy right of her laws, will prove alike unprofitable to the State and disreputable to her honor.

. . . . The idea that Mr. Darwin desires some man elsewhere to print it, is too frivolous for consideration, for in this matter he occupies no other position than a citizen, and the work of digestry of the decisions of the courts on our Statutes can be performed by several other lawyers, nearly as well, *perhaps*, as by Mr. Darwin.¹⁵⁶

The act provided that the cost of the volume should not exceed \$2.50 per copy and that the work should be completed within six months from the time the superintendent of the publication should notify the contractor of his readiness to superintend the work.¹⁵⁷

Another act concerning the publication of the *Revision of 1860* was approved on April 2, 1860. By this act C. Ben Darwin was made the Superintendent of Revision and was instructed "to incorporate, by proper revision, into the revision prepared by him, . . . all the laws of a general nature passed at this Session, to the end that the volume . . . shall contain, when published, all the laws of a general nature which shall be of force in this State, when the laws of this Session have taken effect."¹⁵⁸

The act also called for the publication of 10,000 copies of the *Revision of 1860* and 3000 copies of the session laws which were not to be included in the *Revision*. The arrangement prescribed was the same as in the *Code of 1851*

¹⁵⁶ *The Burlington Weekly Hawk-Eye*, Saturday, March 10, 1860. Another article of this nature can be found in *The Iowa State Register* (Des Moines), Vol. V, No. 5, Wednesday, March 14, 1860, entitled *Patriotism and Perseverance Under Difficulties*.

¹⁵⁷ *Laws of Iowa*, 1860, p. 121.

¹⁵⁸ *Laws of Iowa*, 1860, pp. 122-125.

and the matter included in the appendix of the *Code of 1851* was also ordered to be published. For this editorial work, Mr. Darwin was to receive \$1000 and he was also allowed a clerk at \$3.00 per day. The Secretary of State received \$1500 for the purpose of distributing the completed work.

The five commissioners appointed to superintend the printing advertised for bids and the successful bidder was John Teesdale, the State Printer and editor of *The Iowa Citizen* and the *Daily Iowa State Register* of Des Moines.¹⁵⁹ The bids were opened on the 23rd of April, 1860, and the contract awarded to the lowest bidder.¹⁶⁰ There were eleven bidders for the contract, but the proposition of Mr. Teesdale was accepted, the contract price being \$1.95 per volume.¹⁶¹

¹⁵⁹ This advertisement is to be found in *The Iowa State Register* (Des Moines), Vol. V, No. 9, Wednesday, April 11, 1860.

¹⁶⁰ *The Iowa State Register* (Des Moines), Vol. V, No. 11, Wednesday, April 25, 1860. In an article in the same paper on April 11, 1860, entitled *The Legislature — Its Doings, &c.*, Mr. Teesdale has the following to say in regard to the action of the legislature in allowing the work to be contracted for:

“The Code takes effect on the 1st of September. Six months are allowed to the printer and binder for its publication. Contrary to all precedent and in manifest violation of the law creating the office of State Printer,—which secures to him all the State Printing, and requires him to provide for the execution of the same—the Census Board are authorized to contract for the Printing of the Code, and to let it out to other parties than the State Printer and Binder, if they see proper so to do. We cannot anticipate their action, but we know that they will not willingly be a party to the perpetration of a wrong. . . . It will take the contractor some time to prepare for his work, and the revisor will require time to prepare his matter, so that it will be next to impossible to complete the publication of the Code in less than 8 months from the present time.—The failure of the Legislature to provide for the publication of the general laws, will cause much vexation and denunciation. The laws take effect in July, but they will not be published in book form, until several months afterwards. We mention these facts to avoid misapprehension, and that it may be understood the fault of such delay is not ours. The only laws we are authorized to print, are those not to be embraced in the Code. They will be out in due time.”

¹⁶¹ *The Iowa State Register* (Des Moines), Vol. V, No. 11, Wednesday, April 25, 1860.

In order to perform the work within the time prescribed by the law, it was necessary to send the work out of the State, and the printing and binding was done by Case, Lockwood & Co., of Hartford, Connecticut, under the direct supervision of Mr. C. Ben Darwin.¹⁶² The work was completed by the middle of September, 1860, and in speaking of the completion of the volume Editor Teesdale declared:

It affords us pleasure to state that the printing of the Code has been completed, and Mr. Darwin arrived in this city with the first bound copy, several days since. The delivery of the books will commence as fast as they can be issued from the bindery at Hartford; which will be at the rate of 300 copies per day. The work is well done, and the book will be an ornament to the law libraries of the State. We have thus not only fulfilled our contract with the State, but secured a completion of the work nearly three months in advance of the requisitions of the law. A desire to ensure this result, and thus meet what seemed to be an imperious public necessity, is our sole reason for sending the work out of the State.¹⁶³

Very little is to be found in the newspapers concerning the *Revision of 1860* after its appearance. Grave political issues were before the people and local issues and affairs were of minor interest.¹⁶⁴

¹⁶² *The Iowa State Register* (Des Moines), Vol. V, No. 18, Wednesday, June 13, 1860. "Mr. Darwin is at Hartford, Conn., superintending the printing of the Code, at the extensive book printing establishment of Case, Lockwood & Co. He prepared all his matter before leaving this city, so that there will be no delay in the execution of the work."

¹⁶³ *The Iowa State Register* (Des Moines), Vol. V, No. 32, Wednesday, September 19, 1860.

¹⁶⁴ The following newspaper articles bear on the Code and the reports of the Commissioners: *The New Code* in *The Clinton Herald*, Saturday, February 25, and Saturday, March 10, 1860; *Capital Correspondence* of March 3, 1860, in *The Cedar Valley Times* (Cedar Rapids), Thursday, March 15, 1860; *Letters from the Capital* in *The Vinton Eagle*, Tuesday, February 21, and Tuesday, March 13, 1860; *The Revised Laws* in *The Washington Press* (Washington, Iowa), Vol. IV, No. 48, Wednesday, April 18, 1860. In *The Iowa Weekly Citizen* (Des Moines), are the following articles: *Revision of the Laws*, Wednesday, February 3, 1858; *Revision of the Code*, Wednesday, February 10, and Wednesday, February 17, 1858. *The Burlington Weekly Hawk-Eye* contains:

CHARACTER AND CONTENTS OF THE REVISION OF 1860¹⁶⁵

The *Revision of 1860* is a quarto sized volume of 1160 pages and is divided into 247 chapters of 5198 sections. The contents are divided into four parts which correspond to the classification in the *Code of 1851*. The title page of this Code reads as follows:

REVISION OF 1860,
CONTAINING ALL THE
STATUTES OF A GENERAL NATURE
OF THE
STATE OF IOWA,
WHICH ARE NOW IN FORCE, OR TO BE IN FORCE, AS THE
RESULT OF THE LEGISLATION
OF THE
EIGHTH GENERAL ASSEMBLY.

PUBLISHED BY VIRTUE OF CHAPTERS 158 AND 160, OF THE ACTS OF THE EIGHTH
GENERAL ASSEMBLY OF THE STATE OF IOWA.

DES MOINES, IOWA:
JOHN TEESDALE, STATE PRINTER.
1860.

Most of the new features embodied in the *Revision of 1860* are to be found in parts three and four, since parts one

The Proposed Code of Civil Practice, Saturday, February 11, 1860; *The New Code of Civil Practice and Notes*, Saturday, March 17, 1860; *Capital Correspondence*, on Saturdays, February 18, March 3, 10, 17, 24, and April 7, 1860; and an editorial on the printing of the Code on Saturday, March 17, 1860. In *The Daily Iowa State Register*, Des Moines, are the following articles: *The Legislature*, Monday, January 23, 1860; *Progress of Legislation*, Thursday, February 16, 1860; *Verification*, Wednesday, February 22, 1860; *Legislative*, Saturday, February 25, 1860; *What the New Code does About Equity Practice*, Saturday, February 25, 1860; *A Word on the Progress of Legal Reform*, Monday, February 27, 1860; *The Printing of the Code*, Thursday, March 8, 1860; *Patriotism and Perseverance Under Difficulties*, Monday, March 12, 1860.

¹⁶⁵ The copy of the *Revision of 1860* used by the writer in the preparation of this article was presented to the State Historical Society of Iowa by Mrs.

and two were simply revised. But even in parts one and two many new statutes are to be found which were lacking in the *Code of 1851*. The Register of the State Lands¹⁶⁶ and the Supreme Court Reporter are to be found as new State officials,¹⁶⁷ and the office of Attorney General appears in the *Revision of 1860* for the first time in a code of Iowa law.¹⁶⁸ The same is true of the office of State Binder.¹⁶⁹ Among the other new features to be found in part one are the provisions for the Geological Survey of the State¹⁷⁰ and "an act requiring complete Reports from Officers in charge of State Buildings and State Institutions."¹⁷¹

It must not be understood that all of the above provisions appear for the first time in the *Revision of 1860*. All changes in parts one and two were passed as acts of the legislature and were printed with the laws of the various sessions, but they appear for the first time in a code in the *Revision of 1860*.

Great changes are to be found in the chapter on "County Judge", the most important of which, perhaps, is the act creating a Board of Supervisors.¹⁷² Likewise, in the chapter on "Swamp Lands" may be discovered many laws passed at various times upon this important subject.¹⁷³ Chapter 45 relates to "Revenue" and appears for the first time in the *Revision of 1860*.¹⁷⁴ This act consists of one

Samuel J. Kirkwood and was from the library of the late War Governor. Samuel J. Kirkwood was the chief executive of Iowa when the *Revision of 1860* was prepared.

¹⁶⁶ *Revision of 1860*, Chap. 9, pp. 18-21.

¹⁶⁷ *Revision of 1860*, Chap. 10, pp. 21-23.

¹⁶⁸ *Revision of 1860*, Chap. 11, pp. 23, 24.

¹⁶⁹ *Revision of 1860*, Chap. 13, pp. 28-30.

¹⁷⁰ *Revision of 1860*, Chap. 14, pp. 30, 31.

¹⁷¹ *Revision of 1860*, Chap. 17, p. 35.

¹⁷² *Revision of 1860*, Sections 302-326, pp. 48-53.

¹⁷³ *Revision of 1860*, Chap. 47, pp. 147-160.

¹⁷⁴ *Revision of 1860*, Chap. 45, pp. 108-132.

hundred and eight sections and was considered to be one of the most important acts of the Eighth General Assembly.¹⁷⁵ Another important financial measure was the act passed in 1858 creating the State Bank of Iowa.¹⁷⁶ A State Agricultural College and Farm was also established by an act passed in 1858.¹⁷⁷ In short, the great progress along all lines in the State during the ten previous years reflects itself in the *Revision of 1860*.¹⁷⁸

Under the title "Of Education" may be found certain of the laws of the Board of Education.¹⁷⁹ The school laws occupy a large section of the *Revision of 1860* and were one of the important issues at this time.¹⁸⁰

Very little change is to be found in part two, which contains substantive law, since such rights remain to a certain degree fixed, requiring less change than other laws. The revision of this part was evidently an easy task, and an examination reveals comparatively few changes.

Part three embraces the "Code of Civil Practice At Law and In Equity" and contains much material not found in the *Code of 1851*, though it is based primarily on the earlier work.¹⁸¹ This part is not divided into titles as was part three of the *Code of 1851*,¹⁸² but is placed in chapters, the first of which was copied from the laws of Kentucky and

¹⁷⁵ Gue's *History of Iowa*, Vol. II, p. 32.

¹⁷⁶ *Revision of 1860*, Chap. 66, pp. 281-297.

¹⁷⁷ *Revision of 1860*, pp. 300-304.

¹⁷⁸ This is shown by the acts providing for insurance companies, State Bank, etc.

¹⁷⁹ *Revision of 1860*, Title XIV, pp. 342-378. The acts of the Board of Education had the effect of law.—*Constitution of 1857*, Art. IX, Sec. 7. See *Revision of 1860*, p. 1001. The enacting clause of such laws was "Be it enacted by the Board of Education of the State of Iowa."

¹⁸⁰ See note 12 above.

¹⁸¹ *Revision of 1860*, p. 439.

¹⁸² *Revision of 1860*, note, p. 439.

contains the "preliminary provisions".¹⁸³ Section 2620 provides for uniformity of procedure in both law and equity and is one of the distinctive features of this Code.¹⁸⁴ The liberality allowed in pleadings is clearly expressed in the following section:

The rule of the common law that statutes in derogation thereof are to be strictly construed, has no application to this code. The provisions and all proceedings under it, shall be liberally construed with a view to promote its object and assist the parties in obtaining justice.¹⁸⁵

Another new feature of part three is section 2675, which makes the following provision:

In 1860, and every sixth year thereafter, there shall be appointed by the governor, by and with the consent of the senate, three commissioners of legal inquiry, who shall hold their office for six years, and any vacancy, by resignation or otherwise, may be filled by the governor, subject to the approval of the senate then, or next to be in session.¹⁸⁶

The Governor placed the Code Commissioners, William Smyth, W. T. Barker, and Charles Ben Darwin, upon this Commission, but no report was ever made by these gentlemen concerning the laws of Iowa.¹⁸⁷

¹⁸³ *Revision of 1860*, Chap. 108, note, p. 439.

¹⁸⁴ *Revision of 1860*, p. 450.

¹⁸⁵ *Revision of 1860*, Section 2622, p. 454.

One new section which came in for some criticism was section 3991, which reads: "The general moral character of a witness may be proved for the purposes of testing his credibility." A correspondent to *The Cedar Valley Times* (Cedar Rapids), Thursday, March 15, 1860, declared: "But this proposed reform, allowing the moral character of a witness to be proven, to test his credibility, is in advance of anything yet proposed. . . . I look on this as a pernicious provision and one that ought not to pass."

¹⁸⁶ *Revision of 1860*, Section 2675, p. 469. See also note on p. 469.

¹⁸⁷ In his first biennial message on January 8, 1866, Governor William Milo Stone speaks of the Commissioners of Legal Inquiry in the following terms:

"I recommend that you constitute the judges of the Supreme Court 'Commissioners of Legal Inquiry' in place of those contemplated by section 2675 Rev. 1860, making it their duty at the close of each regular term to report

Part four is divided into two main sections. The first is taken, with very few changes, from the *Code of 1851* and defines the various crimes, with the punishment prescribed for each. The second part is the "Code of Criminal Practice", prepared by Judge William Smyth.¹⁸⁸ The greater part of this act was entirely rewritten, but many sections from the *Code of 1851* have been kept intact.¹⁸⁹ The last chapter of the fourth part was not embraced in Judge Smyth's revision, as it concerned "The penitentiary of the State, and the government and discipline thereof."¹⁹⁰

At the close of each chapter the compiler has placed a list of all prior laws relating to the contents of such chapter passed in the Territories of Michigan and Wisconsin, or in the Territory and State of Iowa. There also appear, in addition to the "prior laws", the decisions of the Iowa courts interpreting or referring to the chapter. The sections taken from the *Code of 1851* are enclosed in marks of parenthesis. Where the act has been revised merely, the act of the legislature has often been made a part of the chapter revised.

In parts three and four the notes to the various sections fully to the Governor, and also the General Assembly at each regular session, upon any discrepancies or imperfections in the general statutes and code of procedure. These duties should be made imperative, and compensation provided. This is not now the case, and as a consequence no report of Commissioners of Legal Inquiry has ever been submitted. The trust is one of such delicacy and responsibility, that it would be appropriate to confer it upon those who hold the highest judicial position in the State. In this way we will be gradually enabled to systematize and perfect our laws and code of practice, civil and criminal, at the same time that we raise the pay of the Supreme Bench by constitutional means to something near a proper compensatory standard."—Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 55. However, a report of this commission may be found at a later date in *Senate Journal*, 1870, p. 237.

¹⁸⁸ *Revision of 1860*, note, p. 758.

¹⁸⁹ Sections taken from the *Code of 1851* have their number in the earlier work enclosed in parentheses, as "sec. 4442(2773)".

¹⁹⁰ *Revision of 1860*, Chap. 247, pp. 855-867.

include the greater part of the reports of the Code Commissioners. This was done partly in explanation of the sections and partly because of the fact that the reports were very scarce and difficult to secure.¹⁹¹ The Code Editor, Mr. Darwin, also included the decisions of the courts of other States upon sections which were similar to the sections in part three; and wherever necessary, he inserted references to the codes or digests of other States when sections had been taken therefrom and placed in the Iowa Code.¹⁹²

In the *Appendix* there are printed the various documents found in the appendix to the *Code of 1851*, and in addition the "New Constitution of Iowa" and certain acts passed by the legislature.¹⁹³ A great many of these acts refer to the *Des Moines River Lands* and were passed at various sessions other than at the Eighth General Assembly.¹⁹⁴ Concerning the arrangement of the laws in the *Appendix* Mr. Darwin says: "Several laws are placed in this Appendix which would have been placed in some other order could it have been known before printing too far that there would be room for them in the book."¹⁹⁵

COMMENTS ON THE REVISION OF 1860

There does not seem to have been any wide-spread criticism of the *Revision of 1860*. The work appears to have been done in great haste and the arrangement of the legislative acts may well be criticised. But the War of the Rebellion followed so closely after the appearance of the *Revision* that it was overlooked in the general turmoil.

¹⁹¹ *Revision of 1860*, note, p. 758; also note, p. 440.

¹⁹² As examples of such notes and references, see *Revision of 1860*, pp. 500, 509, 510-514.

¹⁹³ There is a total of twenty-five documents included in the *Appendix*.—*Revision of 1860*, Preface, p. xix, xx.

¹⁹⁴ *Revision of 1860*, pp. 889-916.

¹⁹⁵ *Revision of 1860*, note, p. 869.

When, however, the Code Commissioners of the *Code of 1873* had occasion to offer remarks they reported as follows:

To offer any criticism here upon the execution of that Revision would be foreign to our purpose, and ungracious; but we may properly remark that the chief objections to that volume are founded on the method itself, as detailed in this quotation. [*Revision of 1860*, Preface, p. v.] Without verbal changes, and many of them, it is impossible to bring a large number of acts, passed at different times, with no unity or plan of purpose, into a harmonious system; or to escape the necessity of retaining the separate titles, rubrics, numbers and dates of the single acts, which do so much to confuse the general and even the professional reader in these parts of the Revision of 1860. It was, no doubt, with a full appreciation of this fact that the present Commission was instructed not only to "revise," and "arrange," but also to "rewrite" the statutes before us.¹⁹⁶

In regard to the feature of uniformity of procedure, Mr. Justice William Miller, in the preface to one of his works on pleading and practice declares:

The necessity for a work of this character suggested itself to the author several years ago, indeed soon after the enactment of the Revision of 1860.

The Code of 1851, whatever may have been the intention of its authors and of the legislators, did not entirely cut loose from the old rules and principles of pleading and practice, known in common law and chancery proceedings, and provide a new system of its own — simple, complete and perfect. This the Revision professes to do. It gives us a uniform system of procedure in all actions, excepting as to the mode of trial and the manner of producing the evidence in equitable actions — properly so called.

Notwithstanding this was the object of the Revision, it is well known that we are far from having uniformity in actual practice under its provisions. By a comparison of the pleadings in actions in one part of the State with those in another, it will be found that the differences under the same system are wide and radical. While some lawyers follow the substance of the old common law forms, others adopt the forms of the old chancery pleaders, alleging all the

¹⁹⁶ *Report of Commissioners to Revise the Statutes*, 1871, pp. 5, 6.

facts, the evidence to prove them, allegations of information and belief, arguments and legal conclusions.

Believing the design of the civil practice act to be the complete abolishment of both the old systems *as such*, and the establishment of a new one radically different, and founded in good sense and practical wisdom, I became impressed with the idea that a treatise devoted to the practical elucidation of the new system would tend to promote the object of the legislature, in its enactment, secure greater uniformity in the pleadings and proceedings in civil actions, and be of benefit and general convenience to the practicing lawyer, besides supplying the wants of that class who are engaged in preparing themselves to enter the profession. For these reasons, and seeing the field unoccupied, I felt myself justified in the undertaking.¹⁹⁷

SUBSEQUENT LEGISLATION

There was not much subsequent legislation relative to the *Revision of 1860*. The Ninth General Assembly passed two acts making amendments to various sections in the Code of Civil Practice.¹⁹⁸ In the Tenth General Assembly an effort was made to sell the *Revision of 1860* at the price of \$1.50, but the Committee on Ways and Means defeated the measure by reporting unfavorably thereon.¹⁹⁹

In 1866 Mr. W. S. M. Abbott of Adel introduced a bill "to organize a commission to revise the laws on the subject of county and township government", but this bill was reported on unfavorably by the Committee on County and Township Government to which it had been referred, and consideration of it was dropped.²⁰⁰

During the session of 1868 there were a large number of amendments proposed to the *Revision of 1860* and this fact served as a notice that a new codification of the laws of

¹⁹⁷ Miller's *A Treatise on Pleading and Practice*, 1868, Preface, pp. 3, 4.

¹⁹⁸ *Laws of Iowa*, 1862, pp. 173, 229-231. See also *House Journal*, 1862, pp. 732, 734.

¹⁹⁹ *House Journal*, 1864, pp. 283, 327.

²⁰⁰ *House Journal*, 1866, pp. 256, 380.

Iowa would soon be needed.²⁰¹ Action in response to this need was taken in 1870 by the Thirteenth General Assembly in appointing a commission to revise the statutes.²⁰²

THE MILLS BROTHERS CODE

The Codes of Civil and Criminal Procedure were to take effect on September 1, 1860,²⁰³ but it was found early in the year that it would be impossible to have the *Revision of 1860* printed and distributed by that time. Consequently, Mills Brothers, publishers and printers at Des Moines, got out an octavo sized volume of three hundred and forty-six pages containing these two acts. The title page of this volume reads:

CODE
OF
CIVIL AND CRIMINAL PRACTICE,
AS PASSED BY THE
EIGHTH GENERAL ASSEMBLY
OF THE
STATE OF IOWA,
APPROVED MARCH 29 AND 30, A. D. 1860.

DES MOINES, IOWA,
MILLS BROTHERS, CALORIC PRINTERS,
COURT AVENUE.
1860.

This volume was published in May, 1860, and the reasons for its issuance are fully stated in the "Introductory" statement. In part it reads:

As the New Code of Civil and Criminal Practice, adopted at the

²⁰¹ An idea of the number of amendments offered can be gained by looking in the *House Journal*, 1868, at pp. 793 and 813, and in the *Senate Journal*, 1868, at pp. 615 and 636.

²⁰² *Laws of Iowa*, 1870, pp. 75, 76.

²⁰³ *Revision of 1860*, Section 4171, p. 715; also Section 4424, p. 759.

recent Session of the General Assembly, will take effect some months before that volume is regularly published by the State, and in view of the immediate importance to Attorneys, Justices and County Officers, that they should have time and opportunity to become familiar with the new regulations governing the proceedings of Courts, which are entirely different from the present system of practice — the undersigned, at the earnest solicitation of many Attorneys, determined upon issuing a limited number of copies of this volume, in order to supply the present demand.

These Practice Acts have been prepared by a Commission selected from our most able jurists, and are considered equal if not superior to the Statutes of any State in the Union. To show the estimation in which they were held by the General Assembly, it is only necessary to state that they were adopted as originally reported to that body with but few amendments.²⁰⁴

Honorable John A. Kasson of Des Moines prepared an index to this volume and the acts are certified by Elijah Sells, Secretary of State, to be correct copies of the original acts.²⁰⁵ The book was sold for \$2.50 per volume.²⁰⁶

GENERAL LAWS FOR SUPERVISORS AND TOWNSHIP OFFICERS

In addition to the two volumes already described there was published a third volume which contained the laws of Iowa on certain subjects. By an act approved on the 2nd day of April, 1860, it was ordered:

That the Census Board of the State shall as soon as practicable after the adjournment of this session of the General Assembly, cause to be printed by the State Printer, fifteen thousand copies of a volume, in pamphlet form, containing all the general laws of this State pertaining to the duties of the Board of Supervisors, Supervisors of roads, Township Trustees, and other Township officers, together with such practical forms and suggestions as the Board may deem necessary.²⁰⁷

²⁰⁴ *Code of Civil and Criminal Practice*, p. 3.

²⁰⁵ *Code of Civil and Criminal Practice*, Explanatory statement.

²⁰⁶ See *The Iowa State Register*, Des Moines, Vol. V, No. 14, May 16, 1860; and *The Tipton Advertiser*, Vol. VII, No. 16, April 19, 1860.

²⁰⁷ *Laws of Iowa*, 1860, pp. 84, 85.

The title page of this volume, which contains four hundred and fifty-six pages, is as follows:

GENERAL LAWS
OF
THE STATE OF IOWA,
RELATING TO THE DUTIES OF THE
BOARD OF SUPERVISORS AND TOWNSHIP OFFICERS,
INCLUDING
CIVIL AND CRIMINAL PROCEDURE IN JUSTICES' COURTS.

PRINTED BY AUTHORITY OF THE EIGHTH GENERAL ASSEMBLY, UNDER THE
SUPERVISION OF THE CENSUS BOARD OF THE STATE.

SAMUEL J. KIRKWOOD, Governor,
ELIJAH SELLS, Secretary of State,
J. W. CATTELL, Auditor of State,
JOHN W. JONES, Treasurer of State, } CENSUS BOARD.

DES MOINES:

JOHN TEESDALE, STATE PRINTER.

1860.

The creation of the County Board of Supervisors, who were to exercise all powers of a legislative and administrative character in the county, was the principal reason for publishing this book.²⁰⁸ It was the purpose of the book to lay before county and township officers the changes in the laws which affected local affairs.

The book is divided into two parts, the first dealing with county and township affairs, while the second part deals with "Justices and Justices' Courts", prescribing the method of procedure in both civil and criminal actions. Any section in the work can be easily referred to, as there is a complete table of contents and an extensive index. Each chapter is also supplied with head notes and in the

²⁰⁸ *General Laws for Supervisors and Township Officers*, 1860, Preface, p. iii.

margins are reference notes, telling from what section of the original act the particular section was taken. There are also various forms to be found in the book for the guidance of county and township officers in the performance of their duties.

This work appeared some time before the *Revision of 1860*, and consequently the contents were taken directly from the original acts.²⁰⁹ Mr. Thomas F. Withrow and Mr. S. V. White of the Des Moines bar aided the Census Board in "the collection and arrangement of the material", and Mr. White prepared the forms in part two.²¹⁰

It is impossible to state the value to the State of this publication. The *Revision of 1860*, containing all the law, appeared soon after this work, and no references to this smaller collection of statutes appear to have been made.

CONCLUSIONS

The *Revision of 1860* was adopted in portions. Parts one and two, were simply collections of statutes passed at various sessions of the General Assembly. Part three was approved on March 20, 1860,²¹¹ and the Code of Criminal Procedure on March 30, 1860.²¹² These latter parts took effect on September 1, 1860.²¹³ The *Revision of 1860* remained in force until displaced by the *Code of 1873*, although many sections were amended by the legislature during the intervening period.

The *Revision of 1860* is not a high class piece of work mechanically. It shows a haste in preparation that is to be deplored in a volume that is intended to serve as the guide to the laws of a Commonwealth. Nor are the materials used

²⁰⁹ *General Laws for Supervisors and Township Officers*, 1860, Preface, p. iv.

²¹⁰ *General Laws for Supervisors and Township Officers*, 1860, Preface, p. iv.

²¹¹ *Revision of 1860*, p. 717.

²¹² *Revision of 1860*, p. 854.

²¹³ See note 203 above.

of the quality that is demanded in a work of this character. The arrangement of the laws, also, leaves much to be desired. The notes and references, though of some value, could, perhaps, as easily and as well have been left out.²¹⁴ The reprinting of the reports of the Code Commissioners does not appear to have been of any practical value and makes the book appear in places more like a text book on the laws than the laws themselves. The Commissioners, however, were not alone at fault. The legislature is to blame for the enactment of the law in the form in which it appears. Under such an act the Commissioners could not make a harmonious revision. In order to reconcile statutes passed at different times and relating to the same subject it is almost a necessity that the reviser be allowed to make changes in the phraseology, but according to the interpretation put on the act by the Commissioners, they were not authorized to do this. Consequently the *Revision of 1860* is in part simply a compilation; and in part, a revision and codification of the laws.

It also appears that the legislature insisted on haste and the result was only natural, that the *Revision of 1860* is not a work that measures up to the standard of the other codes of Iowa statute law.

CLIFFORD POWELL

THE STATE HISTORICAL SOCIETY OF IOWA
IOWA CITY

²¹⁴ The *Revision of 1860* contains good marginal references, however, and an excellent index covering 153 pages.