

## HISTORY OF THE CODES OF IOWA LAW

### IV

#### THE CODE OF 1873

The *Code of 1873* was used as the official compilation of the statute law of Iowa for a period of twenty-four years — from 1873 to 1897 — and consequently was in use for a longer period than any other code of Iowa law.

During the session of the legislature in the year 1868 there were a large number of amendments offered to the *Revision of 1860*.<sup>1</sup> These were in part due to the increased amount of legislation enacted during the period, to the great material growth in the State, and to changes made by amendments of varying importance to the civil and criminal practice acts.<sup>2</sup>

#### DISSATISFACTION WITH THE REVISION OF 1860

There also appeared to be a considerable amount of dissatisfaction with the *Revision of 1860* among the legal profession. One leading Iowa attorney declared:

We do not propose to say that the work could have been more thoroughly done in the given time, but we will say it was not performed as the General Assembly and the people supposed it would be when the commission was organized. The Revision is a report of such statutes as the commission then believed to be in force — this and nothing more. Nothing was done towards harmonizing existing laws, and no attempt is apparent at a general codification. The statute law of the state to-day consists of such provisions of

<sup>1</sup> For a list of the changes made to the *Revision of 1860* see *House Journal*, 1868, at pp. 793 and 813; and the *Senate Journal*, 1868, at pp. 614 and 636.

<sup>2</sup> *Laws of Iowa*, 1868, p. 208. Chapters 149 and 150 furnish examples of such amendments.

the Code of 1851 as have escaped the pruning knives of later General Assemblies, to which are added the accretions of eighteen years. Since the Revision — so-called — was published in 1860, the legislature has assembled in four regular and two extraordinary sessions. For eighteen years there has been no actual revision of the laws. During this time the Supreme Court has delivered opinions filling twenty-six volumes. It is not often that a state finds its laws in a more confused condition.<sup>3</sup>

Furthermore, Governor Samuel Merrill made the following comments upon the dissatisfaction of the public with the existing criminal code:

I invite your attention to an examination of the Criminal Code of the State. I am led to this suggestion by the fact of our current history, that, although less frequently occurring perhaps than in former years, the summary process known as "lynching" is yet too often resorted to for the purpose of rudely effectuating what are supposed to be the ends of justice. I am of opinion that riotous proceedings of this character are usually prompted by despair of justice being done through the ordinary operation of the law. That this feeling is ill-founded is very probable. Nevertheless, its existence should arrest the attention of the legislature, and lead to the inquiry whether there is any just cause for complaint at the laxity of our laws for the punishment of crime, and whether the criminal code itself, in a laudable anxiety to shield the innocent, has not been made to afford a convenient panoply to wealthy and crafty guilt.<sup>4</sup>

Despite the fact that parts one and two of the Code had been revised in 1860, there existed a great amount of confusion in the laws. The Commissioners of 1860 had so interpreted their powers that they had refused to make any change, either in words or phrases. Consequently the result of their labors was not a clear exposition of the statute law as it existed at the time of the adoption of the

<sup>3</sup> *The Western Jurist*, December, 1869, p. 323.

<sup>4</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 319.

*Revision*.<sup>5</sup> This fact is strikingly brought out in the following paragraph from *The Western Jurist*:

On the 14th of December, 1838, the territorial legislature passed "an act organizing a board of county commissioners in each county of the territory of Iowa." [*Laws* 1839, page 151.] The general provisions of this act are retained in the Revision of 1843. [Revision 1843, Chapter 31.] The Code of 1851 provided for the election of a county judge, conferring upon him "the usual powers and jurisdiction of the county commissioners, and of a judge of probate, and with such other powers and jurisdiction as are conferred by statute." [Code of 1851, § 105.] Almost every subsequent General Assembly made his powers and duties the subject of one or more enactments. In 1860 the General Assembly introduced a radical change in the system of county administration by transferring the fiscal and general affairs of the county to the control of a Board of Supervisors composed of members elected by the people in the several townships. [*Laws* of 1860, Ch. 47, Rev. 1860, Tit. 3, Ch. 22, Act 11.] The act creating the board defines its powers and duties in terms somewhat general, but the General Assembly, evidently realizing the many insufficiencies and imperfections thereof, by a sweeping statute declared: "That in all cases where the powers hereby conferred upon said Board of Supervisors have heretofore been exercised by the County Judge, county court, or other county officers, the said Supervisors shall conduct their proceedings under said powers in the same way and manner as nearly as may be as is now provided by law in such cases for the proceedings of said county judge, county court, and county officers, provided they are not inconsistent with the provisions of this act," [*Laws* of 1860, Sec. 24, Rev. 1860, sec. 325] and "that all laws which may be in force at the time of the taking effect of this act, devolving any jurisdiction or powers on county judges, which said jurisdiction or powers are conferred upon the County Board of Supervisors, by an act of the present General Assembly entitled an act creating a Board of County Supervisors, defining their duties and the duties of certain county officers, shall be held to apply and devolve said jurisdiction and powers upon the said Board of Supervisors, in the same manner and to the same extent

<sup>5</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 5. See also the *Revision of 1860*, preface, p. v.

as though the words County Board of Supervisors occurred in said laws, instead of the words County Judge." [Laws 1860, Ch. 100, Rev. 1860, Sec. 330.] To ascertain the extent of his jurisdiction and the full scope of his duties is no trifling matter to the supervisor. He will carefully study: 1. The provisions of the acts of 1839 and Revision of 1843, for the purpose of advising himself as to the "usual powers and jurisdiction of the county commissioners." 2. The provisions of the Code of 1851 and subsequent statutes relating to the county judge. 3. The act of 1860 creating the Board of Supervisors, and all subsequent statutes relating thereto. 4. He will carefully eliminate from the statutes relating to the county judge and county court those provisions "devolving any jurisdiction or powers on county judges, which said powers are conferred upon the county Board of Supervisors," discriminating between the judicial and administrative functions of the judge; and 5. For the purpose of ascertaining the manner of discharging his duties; will trace through the statutes creating and regulating the exercise of the several powers conferred upon the board to discover the "way and manner as nearly as may be" in which the power was exercised before it "devolved upon the board." These must be read in the light of many decisions of the Supreme Court of the State construing their provisions. Having pursued carefully and successfully this course of study he may be able to intelligently discharge his duties.<sup>6</sup>

The conditions above enumerated — the great increase in the bulk of legislation, the general discontent with the *Revision of 1860*, and the confused state of the laws — were important factors in securing legislative action looking toward a thorough and systematic reshaping and publication of the laws in the form of a code.

#### THE CREATION OF THE CODE COMMISSION

There appears to have been an understanding among leading attorneys that the Thirteenth General Assembly would provide for a commission to revise and codify the statutes. Mr. Thomas F. Withrow wrote in December, 1869, that "one of the most important duties" that would

<sup>6</sup> *The Western Jurist*, December, 1869, pp. 323-325.

fall upon the forthcoming legislature would be to provide for such a work.<sup>7</sup> He then stated his views as to how the commission should be appointed and the method of doing the work. Since Mr. Withrow was connected with some of the leading lawyers of the State through his position as an editor of *The Western Jurist*, his remarks are here quoted:

A new Code, in our opinion, should be prepared, embracing in a proper system all general principles governing conduct and regulating property clearly settled by legislative or judicial declaration. These principles may be gathered from the statutes of the state now in force, and from the decisions of the courts, especially from the decisions of our own Supreme Court. New provisions will occur to those charged with the duty of preparing such a Code, many of which would be suggested by an examination of the *Civil Law*. It is safe to assume that that which the judges announce in written opinions and which the reporters are required to concisely state in the head notes of reported decisions may be written in a code. If it be practicable, there should be little delay in arriving at the conclusion that it is desirable. A systemized statement of the general principles of the law, accessible alike to lawyer and laymen, would be a boon conferred upon both. That which Justinian achieved for the Roman Law, and Napoleon for the Civil Law of France, may be accomplished for American Common and Statute Law.

To attempt to accomplish this at a single session of the General Assembly would be futile. The work requires much investigation, the composition of a large volume in a style combining precision, brevity and clearness. The Code should not be the production of one mind, and should not be characterized by peculiar methods of thought and expression. We suggest:

1. That the Governor, the Judges of the Supreme Court and the Attorney-General be organized as a Board of Revisors, with power:

<sup>7</sup> *The Western Jurist*, December, 1869, p. 321. Mr. Thomas F. Withrow was one of the Iowa editors of the above paper, the general editor at this time being Wm. G. Hammond of Iowa City. Mr. Chester C. Cole succeeded Mr. Hammond as general editor. Mr. Withrow was Reporter of the Supreme Court from April 17, 1860, until 1867.—*Iowa Official Register*, 1911-12, p. 146.

(a) To appoint three commissioners who shall be charged with the duty of codifying the laws of the State.

(b) To regulate and control the discharge of duty by the commissioners by requiring meetings as often as the Board shall deem best, by dividing and assigning the execution of detail, by requiring reports from the commissioners as often as in their opinion shall be deemed necessary for the prompt accomplishment of the work.

(c) To revise the reports submitted by the commissioners and direct amendments of the same.

(d) To remove members of the Board of Commissioners at pleasure; and to fill by appointment vacancies created by removal or otherwise.

2. The report of the commissioners after being revised by the Board of Revisors shall be submitted to the General Assembly for action. If the usual course shall be pursued the whole report will be committed to the Judiciary Committees, and with their suggestions, to the two houses for final action.

The usual method is to appoint a number of commissioners who are under the control of the Legislature. It is believed that the suggestions above set out embrace the outline of a more satisfactory organization. The Commissioners are usually selected from members of the bar in active practice. It is well in some respects that this is so, for in no other circle can men be found better qualified by actual experience for such work. But it also has its disadvantages, especially in connection with biennial sessions of the General Assembly. The demands of an active practice, enforced by threatened defaults, decrees *pro confesso*, and trials of causes without preparation, are more imperious than the sense that a report to be submitted months hence *now* demands attention. To state the proposition plainly, when no supervisory power controls a board of practicing lawyers, there is reason to fear that too often they will yield under the pressure of business to a temptation to postpone and delay the performance of official duty, and will, when the time for submitting a report approaches, do the work assigned hastily. The board by the exercise of the power to apportion the work, to require meetings and to remove and appoint, could enforce prompt attention to the discharge of duty. The principal value of the services of the board will be in the revision they will make of the work of the commissioners. Of the six members of the Board, five will be lawyers and four of them judges of the Supreme Court.

Their revision of the report of the commissioners before it is submitted to the General Assembly, the review it will receive at the hands of the Judiciary Committees and its examination on the floor of each house should give the state a code as nearly perfect as the nature of the case and human infirmity will permit. Too much care, time and labor cannot be given to work so important. Time and money expended in producing a well rounded and clearly expressed body of laws is time and money saved to the people, the bar and the courts. We trust the General Assembly will not hesitate to inaugurate the work.<sup>8</sup>

When the legislature convened on the tenth of January, 1870, Governor Samuel Merrill proposed in his biennial message that a commission be appointed whose duty it would be to "revise and codify the laws of the State".<sup>9</sup> The legislature, with very little discussion, proceeded to enact a bill creating such a commission.<sup>10</sup>

The Thirteenth General Assembly was composed of some very able men and accomplished a great deal in the way of legislation. William Larrabee and G. G. Bennett<sup>11</sup> in the Senate and John A. Kasson<sup>12</sup> and John Y. Stone in the

<sup>8</sup> *The Western Jurist*, December, 1869, pp. 327, 328.

<sup>9</sup> Governor Merrill wrote as follows: "I respectfully call your attention to the condition of our laws. They are spread on our statute-books for several years, reaching as far back as 1851, and some of them even referring to antecedent enactments. Every man is supposed to 'know the law,' and ignorance of it excuses no man. Should it not, then, be the aim of the legislature so to simplify the statute-book, and condense its bulk, that the law may be the more easily ascertained by the citizen? I would recommend that provision be made for the selection of commissioners to revise and codify the laws of the State; these commissioners to be required to report progress to some authority at intervals, and to complete the work in time for the next General Assembly."—Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, pp. 319, 320.

<sup>10</sup> *Laws of Iowa*, 1870, Ch. 75, pp. 75, 76.

<sup>11</sup> Senator Larrabee was chairman of the Committee on Ways and Means and Senator Bennett chairman of the Judiciary Committee. See *Senate Journal*, 1870, pp. 281, 282, and also p. 341.

<sup>12</sup> In the House Mr. Kasson was a member of the Ways and Means Committee and Mr. Stone was a member of the Judiciary Committee.—*House Journal*, 1870, p. 78.

House appear to have been among the leaders during this session.

On February 3, 1870, Senator Granville G. Bennett of Washington, a member of the Judiciary Committee, introduced Senate File No. 95, which was "a bill for an act creating a commission to revise the statistics [statutes] of Iowa, and defining their duties and providing for the publication and distribution of their report."<sup>13</sup> One month later, on March 2, 1870, the above bill came up for consideration and Senator Charles Beardsley moved that it be printed and be made the special order eight days later on March 10th.<sup>14</sup> Senator L. E. Fellows attempted to have the bill indefinitely postponed, but he was unsuccessful and the motion of Senator Beardsley prevailed.<sup>15</sup>

In explaining his desire to have the bill printed Senator Beardsley stated that he had the utmost confidence in the Judiciary Committee and in its able chairman, but that the bill was of such importance that it deserved to be published.<sup>16</sup> Mr. Patterson of Floyd County was opposed to the passage of the bill, giving as his reason the fact that a constitutional convention might be called which would pass or enact a new constitution and under such circumstances a new revision would be a necessity in three or four years. Senator Mulkern of Dubuque County and Senator L. E. Fellows were of the same opinion as was Senator Patterson, while Senators G. G. Bennett, John McKean, and Napoleon B. Moore championed the appointment of a commission.<sup>17</sup>

When the bill to appoint a commission, which had been made a special order, came up for consideration the prin-

<sup>13</sup> *Senate Journal*, 1870, p. 121.

<sup>14</sup> *Senate Journal*, 1870, p. 199.

<sup>15</sup> *Senate Journal*, 1870, p. 200.

<sup>16</sup> *Des Moines Bulletin — Legislative Supplement*, 1870, No. 26, p. 2.

<sup>17</sup> *Des Moines Bulletin — Legislative Supplement*, 1870, No. 26, pp. 2, 3.



cipal discussion centered about the personnel of the commission. Senator Bulis desired to insert the name of Mr. E. E. Cooley of Winneshiek County in place of the name of Mr. John C. Polley, stating in support of his motion: "the persons whose names are suggested in the bill are chosen from the eastern part of the State, and I think they should be selected from different parts of the State".<sup>18</sup> Senator Homer E. Newell desired to amend the amendment by striking out the name of E. E. Cooley and substituting in its place the name of J. O. Crosby of Clayton County, who was at that time a member of the Commission of Legal Inquiry. Senator Ireland rose to defend the original bill containing the name of Judge Polley and both the amendments were lost. Senator Dysart moved to strike out all the names of commissioners in the bill, declaring that the commissioners should be selected by the legislature. Senator West then proposed the name of Mr. T. W. Woolson of Henry County as a member of the board, but this motion was likewise lost. It finally appeared that no name could be substituted for that of Judge Polley and the effort was abandoned.<sup>19</sup>

Senator William Larrabee thought that the laws that had been declared unconstitutional by the Supreme Court should be left in the revision and he moved to strike from the act a section which would have caused such acts to be omitted.<sup>20</sup> Senator Fellows proposed an amendment which required the commissioners to wait until after the people had voted upon the question of calling a convention to revise the constitution.<sup>21</sup> This met with legislative approval

<sup>18</sup> *Des Moines Bulletin — Legislative Supplement*, 1870, No. 36, p. 2.

<sup>19</sup> *Senate Journal*, 1870, pp. 249, 250. See also the *Des Moines Bulletin — Legislative Supplement*, 1870, No. 36, p. 2.

<sup>20</sup> *Senate Journal*, 1870, p. 250.

<sup>21</sup> *Des Moines Bulletin — Legislative Supplement*, 1870, No. 36, p. 2. The action of the Senate is fully described in this paper.

and became a part of the act.<sup>22</sup> Senator John G. Patterson made an effort to have R. G. Reiniger of Floyd County added to the board of commissioners, but the Senate adjourned temporarily without taking any action thereon.<sup>23</sup> When the Senate again considered the bill on the afternoon of April 1st, the proposition put forth by Senator Patterson was lost.<sup>24</sup> The bill was then put on its final passage and was passed by a unanimous vote and without any discussion whatever, showing that the need of a revision of the laws was generally recognized.<sup>25</sup>

Meanwhile, during the discussion of the above bill in the Senate there were other bills<sup>26</sup> and reports tending to aid in the passage of this bill by showing the necessity for a revision.<sup>27</sup> On March 8, 1870, the Commission of Legal Inquiry submitted a report with a draft of a bill annexed.<sup>28</sup> In this report the members of the commission stated that they had not examined all the "Legislation amendatory to the Revision", but had made only a "few suggestions".<sup>29</sup> These were reported from the Judiciary Committee favorably and recommended for passage.<sup>30</sup> One of these bills was Senate File No. 208, providing for a considerable number of changes in the Civil Practice Act of the *Revision of*

<sup>22</sup> *Laws of Iowa*, 1870, Ch. 75, sec. 4, p. 76.

<sup>23</sup> *Senate Journal*, 1870, p. 251.

<sup>24</sup> *Senate Journal*, 1870, p. 421.

<sup>25</sup> *Des Moines Bulletin — Legislative Supplement*, 1870, No. 45, p. 1.

<sup>26</sup> For a list of amendments to laws passed or proposed at the session of 1870 see *Senate Journal*, 1870, pp. 645, 646.

<sup>27</sup> At nearly every session of the General Assembly one or more bills were introduced calling for a compilation of the road laws or a revision and publication of the school laws.

<sup>28</sup> *Senate Journal*, 1870, p. 237.

<sup>29</sup> For an account of the Commission of Legal Inquiry see a previous article in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. X, p. 353.

<sup>30</sup> The Judiciary Committee reported seven bills after having examined the report of the Commissioners of Legal Inquiry. These are to be found in the *Senate Journal*, 1870, p. 359.

1860.<sup>31</sup> This act was favorably received in both houses and was enacted into law.<sup>32</sup>

The House of Representatives does not appear to have taken as active a part in the consideration of the codification of the laws during the session of 1870 as did the Senate. Early in the session a bill was introduced providing for the compilation and publication of the road laws.<sup>33</sup> After being recommended favorably it passed the House by a unanimous vote and also met with favor in the Senate.<sup>34</sup> The Secretary of State was allowed four hundred dollars for preparing the book and the Attorney General fifty dollars for his share in the work.<sup>35</sup>

The Senate bill providing for the appointment of commissioners to revise the statutes was received in the House on April 2, 1870.<sup>36</sup> It appears that the bill had already been considered by the joint committee of the two houses and consequently was not referred to the House Judiciary Committee, but was acted upon at once.<sup>37</sup> Mr. James Dunne attempted to have the name of W. J. Knight of Dubuque stricken out and that of William E. Leffingwell of Clinton inserted. Mr. Theophilus Crawford desired to have Mr. James Dunne of Jackson on the Commission, but the House adopted the bill in the form in which it was received from the Senate, by the decisive vote of seventy to eight.<sup>38</sup>

This bill, having passed both branches of the legislature, was approved by the Governor on April 7, 1870.<sup>39</sup> By its

<sup>31</sup> *Senate Journal*, 1870, pp. 359, 375.

<sup>32</sup> *Senate Journal*, 1870, p. 461. See also the *House Journal*, 1870, pp. 534, 574, 634, 635.

<sup>33</sup> *House Journal*, 1870, p. 131.

<sup>34</sup> *House Journal*, 1870, pp. 161, 267, 573.

<sup>35</sup> *Laws of Iowa*, 1870, Ch. 86, pp. 87, 88.

<sup>36</sup> *House Journal*, 1870, p. 496.

<sup>37</sup> *Des Moines Bulletin — Legislative Supplement*, 1870, No. 62, p. 2.

<sup>38</sup> *House Journal*, 1870, pp. 500, 501.

<sup>39</sup> *Laws of Iowa*, 1870, p. 76.

provisions, William H. Seevers of Oskaloosa, John C. Polley of Clinton County, and William J. Knight of Dubuque were appointed a commission, with the following instructions:<sup>40</sup>

They shall carefully revise the statutes of this State, rewrite the same, divide them into appropriate parts, arrange them under proper titles and chapters, omit all parts repealed and such as have become obsolete, insert all amendments, so as to make the same complete, transpose words and sentences, arrange and number the same in their proper order, and when necessary change the phraseology by leaving out and inserting words and sentences so as to adapt the same to the form of county government and system of courts as fixed by law. They shall omit from such revision all statutes of a private, local, or temporary character; those relating to the apportionment of the State into congressional, senatorial, representative, and judicial districts; all references to prior laws, decisions, notes, and references to their own report or that of any former commission on revision.<sup>41</sup>

By another section of this act the Commissioners were instructed not to enter upon their labors until after the general election in 1870, when it would be determined whether or not the Constitution would be revised. If the people should vote to revise, the Commissioners were not to perform any duties until advised by the next General Assembly. But if there was to be no revision of the Constitution, the Commissioners were to report to the Governor by July 4, 1871, all the changes, omissions, or additions made to the laws of the State.<sup>42</sup>

The Governor was thereupon to have one thousand copies of the report printed by the first day of the following September and distribute the same to the various State officials and to the members of the legislature.<sup>43</sup> The Com-

<sup>40</sup> *Laws of Iowa*, 1870, Ch. 75, sec. 1, p. 75.

<sup>41</sup> *Laws of Iowa*, 1870, Ch. 75, sec. 3, pp. 75, 76.

<sup>42</sup> *Laws of Iowa*, 1870, Ch. 75, sec. 4, p. 76.

<sup>43</sup> *Laws of Iowa*, 1870, Ch. 75, sec. 5, p. 76.

missioners were to be allowed a per diem of ten dollars for "each and every day actually employed" and ten cents a mile for every mile "necessarily" travelled in the discharge of their duties.<sup>44</sup> In addition, they were to be furnished with such stationery and statutes as would be needed for their work.<sup>45</sup>

It will thus be seen that the law was very explicit and comprehensive in its provisions. In determining the intention of the legislature the Commissioners came to the conclusion that they were "not only to 'revise', and 'arrange', but also to 'rewrite' " the statutes,<sup>46</sup> but that this did not include a codification of the unwritten law or of the judicial decisions of the Iowa Supreme Court. In fact, judicial opinions received no notice except in cases where statutes had been declared unconstitutional.<sup>47</sup> The interpretation placed by the Commissioners upon their powers is forcefully stated in the following extract from their report:

It is equally clear that we were to revise and rewrite the statutes, not merely to compile them. The power to do this is given with remarkable fullness and particularity, and great care is taken to exclude the possibility of our reporting a compilation, with the marks and references which in a mere compilation are necessary. The evident intention was that the new volume should be, like the Code of 1851, a homogeneous unit, dating and deriving its validity from a single enactment, so that no question could be raised as to the repeal or superseding of one section by another, or the relative age of different provisions.<sup>48</sup>

#### THE CODE COMMISSIONERS

The Commissioners appointed to revise the statutes were men of great legal learning and ability. The original Com-

<sup>44</sup> *Laws of Iowa*, 1870, Ch. 75, sec. 6, p. 76.

<sup>45</sup> *Laws of Iowa*, 1870, Ch. 75, sec. 7, p. 76.

<sup>46</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 6.

<sup>47</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 7.

<sup>48</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 7, 8.

mission, consisting of William H. Seevers, John C. Polley, and William J. Knight, did little more than organize and divide their labors, as they were forced to wait until after the fall elections before commencing their task. Mr. John C. Polley removed from the State late in the year 1870,<sup>49</sup> thus necessitating the appointment of a new member and the reassignment of labors. Accordingly, Governor Merrill appointed Chancellor William G. Hammond of the Law Department of the State University of Iowa to the vacancy. On December 26, 1870,<sup>50</sup> Chancellor Hammond took the oath prescribed in the act, and thereafter the personnel of the Commission remained unchanged until the entire work was finished.

William H. Seevers of Mahaska County was the chairman of the Code Commission.<sup>51</sup> Judge Seevers was born and educated in Virginia, removing to Mahaska County, Iowa, in 1844. Two years later he was admitted to the bar. In 1848 he was elected prosecuting attorney and in 1852 to the judgeship of the Third Judicial District, which position he held for five years. He was twice a member of the lower house of the legislature, serving in 1858 and again in 1876. After the adoption of the Code, Judge Seevers was appointed its Editor. In 1876 he was elevated to the Supreme Bench of the State and served on that tribunal for two terms, until 1888.<sup>52</sup> He died in March, 1895.<sup>53</sup>

William G. Hammond of Iowa City, who wrote parts one and two of the *Code of 1873*, was a very able lawyer, a distinguished teacher, and a man of rare attainments and

<sup>49</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 3.

<sup>50</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 3, 4.

<sup>51</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 3.

<sup>52</sup> *Iowa Official Register*, 1911-12, p. 140.

<sup>53</sup> For biographies of Judge William H. Seevers, see the *Annals of Iowa*, 3rd Series, Vol. II, p. 80; *The History of Mahaska County*, 1878, pp. 592, 593; *The Courts and Legal Profession in Iowa*, 1907, Vol. I, pp. 318, 319; and Gue's *History of Iowa*, Vol. IV, p. 238.

great learning.<sup>54</sup> He was born at Newport, Rhode Island, on May 3, 1829, and received his collegiate education at Amherst College, graduating with the A. B. degree in 1849. He read law in New York City following his graduation and was admitted to the bar in 1851. In 1856 he went abroad and spent some time at Heidelberg. Following his return to America in 1858 he emigrated to Iowa, locating at Anamosa, from whence he removed to Des Moines in 1867. There he opened up a practice and was associated with the Iowa College of Law. One year later, in 1868, he removed to Iowa City, where he became Chancellor of the Law Department of the State University of Iowa. This position he ably filled until 1881, when he became Dean of the St. Louis Law School. In 1889 Chancellor Hammond headed the Committee on Legal Education of the American Bar Association and he was also at one time President of The State Historical Society of Iowa.<sup>55</sup> His death occurred on the twelfth of April, 1894.<sup>56</sup>

William J. Knight of Dubuque was a Democrat in poli-

<sup>54</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 4.

<sup>55</sup> See Shambaugh's *A Brief History of The State Historical Society of Iowa*, 1907, p. 23.

<sup>56</sup> Biographies of William G. Hammond may be found in the *Annals of Iowa*, 3rd Series, Vol. I, p. 503; *Iowa Historical Record*, Vol. X, No. 3, July, 1894, pp. 97-106; *The Courts and Legal Profession of Iowa*, 1907, Vol. I, p. 155; McClain's *William Gardiner Hammond in Great American Lawyers*, Vol. VIII, p. 191; Gue's *History of Iowa*, Vol. IV, pp. 117, 118. A fine tribute is paid to Chancellor Hammond's scholarship by John P. Irish in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. VIII, p. 554.

A considerable number of the papers and manuscripts of William G. Hammond are preserved in a collection deposited with The State Historical Society of Iowa by his daughter. This collection contains a scrap book filled with newspaper clippings concerning Chancellor Hammond. The following clipping, found in this *Scrap Book* at p. 26 shows the public confidence placed in the Commission:

"If the Legislature will stay the hand of mutilation Iowa is pretty sure of having a model code as the result of the labors of the Commission. Every State is not so fortunate in getting gentlemen to revise codes so versed in the science and practice of the Law as Messrs. Hammond, Knight and SeEVERS."

tics and was the youngest member of the Code Commission. He was born in Kilkenny, Ireland, on March 3, 1838, and was educated at Kilkenny College. In 1852 he sailed for America and later studied law in an office at Dubuque, winning admission to the bar in 1857. In 1869 he became Mayor of the city of Dubuque, and at later periods he served in both houses of the State legislature.<sup>57</sup> His death occurred in 1908.

#### THE WORK OF THE COMMISSION

Immediately after the appointment of Mr. Hammond to the Commission it entered in earnest upon the performance of its duties.<sup>58</sup> On September 9, 1871, the Commission submitted to Governor Samuel Merrill its report and also a manuscript copy of the Code which it had prepared.<sup>59</sup>

According to this report, the first meeting of the Commission was held on November 9, 1870, at which time an organization was effected and the work divided. To Mr. Polley were allotted parts one and two to revise and codify; Mr. Seevers was selected to take the Code of Civil Procedure, and Mr. Knight the Code of Criminal Procedure. Shortly afterward, as has been noted, Mr. Polley resigned and on December 24, 1870, Mr. Hammond was appointed to take his place.<sup>60</sup>

Mr. Hammond assumed the parts assigned to Commissioner Polley and the Commission was "actively and constantly engaged in its labors" until the work was completed.

<sup>57</sup> For biographical material concerning William J. Knight see *The Bench and Bar of Iowa*, 1901, pp. 348, 349; *The Courts and Legal Profession of Iowa*, 1907, Vol. I, pp. 166, 167; and the *Proceedings of the Iowa State Bar Association*, Vol. XIV, p. 151. Very little of a biographical nature is to be found concerning John C. Polley of Clinton County, who was appointed on the original commission.

<sup>58</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 4.

<sup>59</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 3, 20.

<sup>60</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 3, 4.



At intervals of about a month the Commission met and went over the work jointly. As a result the Code submitted to the legislature was "without a single dissent from any member of the Commission to any recommendation contained either in the Code or in this Report."<sup>61</sup> But the Commission lamented the fact that it was given such a short time in which to complete its labors — the two former code commissions having been granted from four to six times the length of time for carrying out the task of codification. In deploring the lack of a sufficient amount of time in which to do their work in a proper manner the Commissioners took occasion to criticise the *Revision of 1860* and praise the *Code of 1851*. In speaking of the latter work they declared:

The careful examination which we have been obliged to make of that Code, as well as all the subsequent legislation of the state, warrants us in saying that,—speaking now with reference to form, style, and method only, and without reference to the subject-matter — the Code of 1851 is altogether the best executed piece of legislation we have ever had in the state, of any considerable length, and is equalled by very few of the laws of the other states of the Union, in these qualities, so far at least as we have had opportunity to examine.<sup>62</sup>

Owing to the fact that the Commission could not begin its work until about January 1, 1871, it was found to be impossible to complete the task by the date set in the statute (July 4th), and as a consequence the report was over two months late in appearing.<sup>63</sup> The interpretation which the Commissioners placed on their powers has already been noted. The most interesting part of the report, perhaps, is the portion wherein are enumerated the general rules adopted in preparing the manuscript code. In short,

<sup>61</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 4.

<sup>62</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 5.

<sup>63</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 20.

these were: to make no change for its own sake; to avoid "changes that were connected with partisan or sectional purposes"; to arrange all new matter for the practical convenience of those who were to use it; to secure the threefold quality of precision, clearness, and brevity in all cases where language was altered and to substitute the English equivalent for all Latin terms or phrases; to avoid repetition; and to omit certain things, such as repealing clauses, curative, or retroactive clauses, amending clauses, and all sections giving a legislative construction to prior acts, which were often found in the session laws.<sup>64</sup>

The idea of substituting the English term or phrase for the Latin equivalent appears to have met with popular favor, as the following article taken from a State paper, and entitled *Plain English Ahead*, would indicate:

We notice, in examining the report of the Commissioners to Revise the Statutes of Iowa, among the many good and useful measures proposed, one that we hail as peculiarly indicative of a change which will in law, as it would in the other learned professions, meet with almost universal approval,—the removing at once of all foreign words and phrases, the retaining of which has long since ceased to be either necessary or useful. The Committee say they have endeavored "to make the Statute book speak plain English throughout even where a few more letters were required." Thus they have substituted "by virtue of his office," for *ex officio*, "in good faith," for *bona fide*, "presumptive" for *prima facie*, etc, etc. They only retain a few such recognized names as have in fact become our own technical terms. The wholesome good sense of this move we are sure will be apparent to every one. If there ever was any apology for the use of foreign words and phrases in the English books and practice of law, literature, medicine or divinity, the time has long since passed.

. . . . The English language is following Anglo-Saxon enterprise throughout the world. It will yet be universal. It will be the court language of civilization. It is unequalled by any language, living or dead, for its breadth of application and readiness of

<sup>64</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 11-13.

adaptation, and there can be no excuse for clinging to these worse than useless idiomatic expressions of a foreign language. They can no longer deceive. They can shield ignorance no more. We heartily commend the Law Codifiers of Iowa for their command of plain English to the front.<sup>65</sup>

In selecting the method of arrangement in the proposed Code the Commission unhesitatingly adopted the plan of the *Code of 1851*, declaring that it was "substantially the one that we would choose in a new case."<sup>66</sup> This was the division into four grand chapters or parts, a system which was declared to be in use in the codes of the State of New York, and was known as the logical, philosophical, or natural order.<sup>67</sup> The Commissioners declared that they had "departed no farther" than they could help from the plan of the *Code of 1851*, the greater portion of Title XIII being changed from part one to part two, since it contained private law for the most part.<sup>68</sup> The greatest number of changes occurred in the first two parts, which had not been changed, except by subsequent session laws, since 1851, for the revision in 1860 had really done little if any good in the way of simplifying the provisions of these parts, acts inconsistent with each other being found therein.<sup>69</sup> In closing their report the Commissioners suggested a plan for the consideration of the manuscript code, and called for any suggestions looking toward the improvement of the work.<sup>70</sup>

Following a *Synopsis*, in which is shown where the sections of the proposed code may be found in the preceding codes,<sup>71</sup> the Commissioners took up each part of the new act

<sup>65</sup> From a clipping found in a *Scrap Book*, p. 26, in the Hammond Collection in The State Historical Society of Iowa.

<sup>66</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 14.

<sup>67</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 15.

<sup>68</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 16.

<sup>69</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 34.

<sup>70</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 20.

<sup>71</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 21-32.

and gave a list of all substantial changes and the reasons therefor. The title of the first part was changed to "Public Law."<sup>72</sup> So, too, some of its subdivisions, such as Titles V, IX, and XV, disappear altogether. In writing parts one and two Chancellor Hammond stated that it was necessary to use only the *Code of 1851* and the session laws from 1851 to 1870, as the *Revision of 1860* was of practically no assistance, owing to its jumbled arrangement.<sup>73</sup>

One of the proposed changes was in chapter three of Title I which called for a division of the session laws into two series, one containing the general and the other the special

<sup>72</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 33.

<sup>73</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 33, 34.

Chancellor Hammond, in detailing his method of revising the Public and Private Law declares: "The First and Second Parts of the Revision of 1860 are merely a compilation of such parts of the Code of 1851 as were understood to be in force at that time, and the Session Laws of a public nature passed between 1851 and 1860. The latter were printed without even the slightest verbal changes; and an amending act was usually thrown into the form of a subsequent article, without any attempt to arrange the several sections in their appropriate places. Even the misprints, errors in punctuation, and other defects of the session laws, (which were then most carelessly printed,) were reproduced with scrupulous fidelity. Conflicting sections were frequently allowed to remain, and in a few cases sections were omitted which had not been repealed. The additional matter was professedly arranged according to the plan of the Code; but with so little care as almost to obliterate that plan entirely, under the chaos of new subjects introduced by ten years of active legislation.

"These remarks are made reluctantly, and only to explain and justify the course pursued: which was to disregard entirely the changes made by the Revision in the plan of the Code of 1851, and to make that Code, in its original form, the basis of our work. At first indeed the Revision was taken as a guide by the member of the commission who had these parts in charge, and a considerable amount of work done in adapting the later laws to its arrangement. But so soon as an attempt was made to put a chapter thus arranged into its final shape, omitting all the numbers, rubrics, foot-notes, etc.; by which the relation of one section to another, and the meaning of both, are there determined, the fatal defects of the method adopted became evident. It was seen that almost every chapter of the Revision (except those taken without change from the Code) would have to be reconstructed, before it would be even intelligible without these extraneous aids. And the easiest way to do this was to go back to the Code of 1851, and to construct the present work from that Code and the Session Laws of 1851-1870."

laws of the session.<sup>74</sup> The acts in the series of general laws were to be numbered consecutively from one session to another, the idea being that the acts of two or three sessions of the General Assembly could be bound in a single volume, and, being numbered consecutively, would form a supplement to the Code. Thus, according to the author of the report, "the statute law of the state may be left unrevised for a quarter of a century, with less trouble and confusion resulting therefrom than has arisen in ten years of the old system, or want of system."<sup>75</sup>

Title III is a new title and is headed "Of the Judicial Department." The organization of the courts, however, is not included under this heading, but is left, as formerly, in part three.<sup>76</sup> One change which was considered advisable was the taking from the Circuit Judge of the power of granting licenses to sell liquor and the granting of such power to the County Board of Supervisors.<sup>77</sup>

The name of part two has been changed in the proposed code from "Of the Rights of Persons" to "Private Law",<sup>78</sup> but this part has fewer changes in it than have the other three.<sup>79</sup> One new section which was proposed, however, provided that no vendor should have a lien for unpaid purchase money after possession had been delivered to the vendee, unless it was reserved by an instrument in writing.<sup>80</sup> Another new section was one exempting the husband from liability for torts committed by his wife.<sup>81</sup>

Chairman Seevers had in charge the preparation of the

<sup>74</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 36.

<sup>75</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 37.

<sup>76</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 41.

<sup>77</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 56, 57.

<sup>78</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 61.

<sup>79</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 61, 62.

<sup>80</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 62, 63.

<sup>81</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 67.

Civil Practice Act and although he proposed the substitution of a considerable number of sections, they nearly always tended to greater brevity and clearness than was to be found in the original sections in the *Revision of 1860*. Two new sections relating to witnesses were copied from the New York Code of Civil Practice.<sup>82</sup> A large number of changes are to be found in chapters 161 and 162 which in the *Revision* contained "General Provisions" and sections relative to "Compensation of Officers", respectively.<sup>83</sup>

William J. Knight revised part four, which contains the Criminal Code.<sup>84</sup> One feature emphasized was the placing of a maximum penalty that could be imposed and leaving the minimum punishment discretionary with the court.<sup>85</sup> A provision was also recommended looking to the bringing into court of a corporation on an indictment.<sup>86</sup>

The manuscript copy containing the features above enumerated was printed and bound in two large quarto sized volumes with blank pages bound between each printed page. The code as thus reported was supposed to be in the same form as when finished and hence did not contain an enacting clause, nor was it reported in the form of a bill.

The first volume of this proposed code contains part one, on "Public Law", and consists of three hundred and twenty-three printed pages. The second volume contains parts two, three, and four, and in other respects is similar to volume one.<sup>87</sup>

<sup>82</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 136, 137.

Many other new sections are also to be found in part three, but it would be impossible in an article of this character to state the new provisions introduced by the Code Commissioners. It is aimed to give only some of the most striking examples by way of illustration.

<sup>83</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 139-142.

<sup>84</sup> *Report of Commissioners to Revise the Statutes*, 1871, p. 3.

<sup>85</sup> *Report of Commissioners to Revise the Statutes*, 1871, pp. 143, 145.

<sup>86</sup> *Report of Commissioners to Revise the Statutes*, 1871, Sec. 4672 a, p. 158.

<sup>87</sup> Part two comprises seventy-eight printed pages; part three, one hundred and seventy-four; and part four, one hundred and forty-three.

There appears to have been very little criticism of the report or of the draft of the code accompanying it. One interesting review of the work, however, is not especially friendly, since it contains the following adverse criticism of the method of arrangement:

Without attempting to pass upon the work, which is not yet finished, we may express our satisfaction that it is in able hands. The portion of the code before us is the work of Mr. William E. [G.] Hammond, now a professor in the Iowa City Law School, and formerly editor of the *Western Jurist*, to which he contributed some criticisms of unusual excellence. If our respect for the authors of the report was less, we should less regret their avowed empiricism and distrust of philosophical methods of arrangement. In such a fragmentary work as a collection of statutes, it may be well enough to be "governed by the practical convenience of those who use the volume, rather than by any so-called scientific rules." But we regret what seems to us an ill-judged sneer at "the elaborate theories which have been devised 'out of the depths of their own consciousness,' or borrowed from foreign jurisprudence, by recent writers on classification." The most educated American lawyers are those, we believe, who would be slowest to adopt this tone. We must reiterate our profound conviction that the methods which are commonly called practical are in truth the most unpractical and destructive of sound legal thinking.<sup>88</sup>

#### LEGISLATIVE ACTION ON THE PROPOSED CODE

The Fourteenth General Assembly convened on the eighth of January, 1872.<sup>89</sup> Two days later Governor Samuel Merrill in his message to the legislature declared:

The report of the commission has been printed and transmitted to the members elect of the Fourteenth General Assembly. You have therefore been enabled to examine the recommendations of the Commissioners, with their reasons therefor. To the changes they propose, your experience will doubtless enable you to add others. I

<sup>88</sup> This review is found on two printed pages and appears to have been taken from some professional journal or magazine. It is found in the Hammond Collection in The State Historical Society of Iowa, in a *Scrap Book*, p. 26.

<sup>89</sup> *House Journal*, 1872, p. 3.

endorse in the main the recommendations of the report, and sincerely hope that the code recommended, with such amendments as the General Assembly may see fit to make, will soon become the law of the State.<sup>90</sup>

The Governor also appeared to be very much interested in the Criminal Code and endorsed the suggestions of the Commissioners relative to abolishing the grand jury, declaring that "the grand jury is a costly and useless relic of by-gone days," and "its abolition will work no detriment whatever to the cause of justice."<sup>91</sup>

Governor Cyrus C. Carpenter in his inaugural address also called attention to the report of the Codifying Commission, declaring it to be the mature work of distinguished lawyers and that its adoption would "tend to round out and perfect our code of laws."<sup>92</sup>

On January 15, 1872, Mr. Frederick O'Donnell of Dubuque offered a resolution calling for the appointment of a joint committee, three from the House and two from the Senate, whose duty it should be "to present a bill for the adoption of the Code recommended by the Commissioners to Revise the Laws."<sup>93</sup> The above resolution was not adopted, but on the following day the Senate passed a concurrent resolution, offered by Senator James S. Hurley of Wapello, calling for the appointment of a joint committee of five from each house, with duties similar to those provided for in the defeated House resolution.<sup>94</sup> After two unsuccessful

<sup>90</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. III, p. 374.

<sup>91</sup> It would be interesting to know exactly to what Governor Merrill referred, for the proposed code does not contain any sections looking toward the abolition of the grand jury. On the other hand it specifically provides for the grand jury.—Chapter 196. Nor does the report appear to contain any suggestion looking toward the abolishment of the grand jury.

<sup>92</sup> *House Journal*, 1872, p. 67.

<sup>93</sup> *House Journal*, 1872, p. 75.

<sup>94</sup> *Senate Journal*, 1872, p. 30.



attempts to amend, this resolution was adopted in the Senate and on the day following, January 17, 1872, it passed the House.<sup>95</sup> Senators James S. Hurley, William Larrabee, Charles Beardsley, John P. West, and Samuel H. Fairall were appointed from the Senate,<sup>96</sup> and Representatives John H. Gear, John A. Kasson, Henry O. Pratt, Cicero Close, and Frank T. Campbell from the House.<sup>97</sup> On January 20th this committee reported a concurrent resolution to the Senate recommending that one thousand copies of parts one and two of the manuscript copy of the proposed code be printed, 600 for the use of the House, 300 for the use of the Senate, and one hundred for the use of the Code Commissioners.<sup>98</sup> This resolution was adopted by both houses.<sup>99</sup>

Mr. George Paul of Iowa City in the House of Representatives offered a resolution authorizing William G. Hammond to superintend the publication of parts one and two, but the resolution was not adopted.<sup>100</sup> However, a Senate concurrent resolution, offered by Mr. James Hurley, which requested the commissioners to superintend the printing of their report, was adopted.<sup>101</sup>

On January 22nd Senator Charles Beardsley of Burlington offered a resolution inviting the Code Commission to seats on the floor of the two houses during the consideration of the report.<sup>102</sup> After being referred to the Joint Committee on the Revision of the Statutes, the resolution was adopted by both the House and the Senate.<sup>103</sup>

<sup>95</sup> *House Journal*, 1872, p. 95.

<sup>96</sup> *Senate Journal*, 1872, p. 44.

<sup>97</sup> *House Journal*, 1872, p. 102.

<sup>98</sup> *Senate Journal*, 1872, p. 51.

<sup>99</sup> *House Journal*, 1872, p. 113.

<sup>100</sup> *House Journal*, 1872, pp. 157, 158.

<sup>101</sup> *Senate Journal*, 1872, p. 101; see also *House Journal*, 1872, p. 176.

<sup>102</sup> *Senate Journal*, 1872, pp. 54, 55.

<sup>103</sup> *Senate Journal*, 1872, p. 73; see also *House Journal*, 1872, p. 139.

The Joint Committee on the Revision of the Statutes, which was appointed to report the best method of considering the report of the Commissioners reported on January 24th by offering a concurrent resolution which provided for dividing the report among the various committees of the two houses.<sup>104</sup> When any part of the proposed code came on for consideration the committees of the two houses should consider it jointly, and after consideration report to their respective houses through a Joint Committee of Revision, which should be composed of five members from each house. This report was adopted six days later, on January 30, 1872, by the Senate,<sup>105</sup> but no action seems to have been taken thereon in the House.

On February 19th Mr. John Duncombe of Fort Dodge offered a resolution in the House providing for the consideration of the Code every day at 2:30 P. M. in Committee of the Whole, and detailing the manner of considering the same.<sup>106</sup> After some discussion it was adopted. Senator Charles Beardsley had previously introduced a resolution in the Senate on January 26th, providing that that body should make the consideration of the Code a special order on and after February 19, 1872, which had been adopted.<sup>107</sup> When the nineteenth of February was reached, however, Senator Samuel H. Fairall introduced in the Senate the identical resolution that Mr. John F. Duncombe had introduced into the House,<sup>108</sup> and the same was adopted two days later.<sup>109</sup> It appears that this special order was observed for some time in the consideration of the reports.<sup>110</sup>

<sup>104</sup> *Senate Journal*, 1872, pp. 72, 73.

<sup>105</sup> *Senate Journal*, 1872, p. 108.

<sup>106</sup> *House Journal*, 1872, pp. 216, 217.

<sup>107</sup> *Senate Journal*, 1872, p. 81.

<sup>108</sup> *Senate Journal*, 1872, p. 151.

<sup>109</sup> *Senate Journal*, 1872, p. 165.

<sup>110</sup> *Senate Journal*, 1872, p. 188.

During a part of this discussion the legislature ordered two hundred copies of the unbound statutes reported by the codifying Commissioners to be interleaved with blank pages and bound for the use of the members of the General Assembly.<sup>111</sup>

On the 28th of February a new method of handling the proposed Code was suggested to the Senate by a resolution introduced by Senator Samuel McNutt of Muscatine.<sup>112</sup> It provided that after the 29th of February each chapter the contents of which contained a separate subject should be considered as a bill, "and numbered code bill No. 1, No. 2, and so on." Senator Robert Lowry of Davenport also proposed that no member be allowed to talk longer than five minutes while in Committee of the Whole on the revision of the statutes.<sup>113</sup> On the same date, in the House, Mr. Henry O. Pratt of Charles City introduced a resolution calling on the State Printer "to furnish to the General Assembly fifty pages per day of the laws as reported by Code Commissioners, and if he cannot furnish the quantity named herein to report why he cannot do so."<sup>114</sup> After passing the House this resolution was referred to the Judiciary Committee in the Senate and seems never to have been reported back to that body.<sup>115</sup>

On the last day of February Senator James S. Hurley of Wapello, the chairman of the Senate Judiciary Committee, offered a concurrent resolution providing for the printing of two hundred copies of parts three and four of the revised statutes, which was adopted by both houses.<sup>116</sup> All

<sup>111</sup> *Senate Journal*, 1872, pp. 160, 164; see also *House Journal*, 1872, pp. 234, 245, 269.

<sup>112</sup> *Senate Journal*, 1872, p. 210.

<sup>113</sup> *Senate Journal*, 1872, p. 211.

<sup>114</sup> *House Journal*, 1872, p. 306.

<sup>115</sup> *House Journal*, 1872, p. 306; see also *Senate Journal*, 1872, pp. 219, 223.

<sup>116</sup> *Senate Journal*, 1872, p. 218; see also *House Journal*, 1872, p. 313.

the parts were interleaved with blank pages and these, when bound, formed the proposed code described above.<sup>117</sup>

On reading the journals of the two houses one is surprised to find so many plans proposed to consider the report of the Code Commissioners. It appears that no sooner had one plan been settled upon until another was adopted in its stead. By the sixth of March the House had only reached part three in its deliberations,<sup>118</sup> and on the next day Mr. Henry O. Pratt of Charles City offered the following resolution:

*Resolved by the General Assembly of the State of Iowa, That it will adopt and pass the new Code, as reported by the Code Commissioners, without including therein the amendments thereto reported and recommended by said Commissioners. And that the Judiciary Committees of the Senate and House of Representatives are hereby constituted a joint committee of the two houses, and are hereby instructed to prepare and report the necessary bill, or bills, to pass and enact said new Code. And,*

*Be it further resolved, That the amendments reported and recommended to said Code by said Commissioners, in their printed report, be made the subject of separate bills, with a view to have the same afterwards incorporated into the body of said Code in their appropriate places.<sup>119</sup>*

This resolution was considered on the following day, while a similar resolution was indefinitely postponed.<sup>120</sup>

One of the most important steps taken by the legislature in connection with the proposed code took place in the Senate on March 5th, when Senator Samuel Fairall introduced the following concurrent resolution:

That on the 27th day of March at 11 o'clock, A. M., this General Assembly do adjourn to meet again on the first Tuesday of February, 1873, at 10 o'clock A. M. to consider and act upon the report

<sup>117</sup> See note 87 above.

<sup>118</sup> *House Journal*, 1872, p. 372.

<sup>119</sup> *House Journal*, 1872, p. 373.

<sup>120</sup> *House Journal*, 1872, p. 387.

of the commission to revise the statutes, and upon the statutes as rewritten and arranged by the commissioners.

That said adjourned session be held for a time not exceeding 30 days, and that no bills be received or considered except such as pertain to the business of said session as above indicated, and to the appropriations to defray the expenses of such session and the publication of the code.<sup>121</sup>

This resolution caused considerable comment and Senator Samuel McNutt immediately proposed a substitute, providing that after certain dates no new bills or other general legislation should be considered.<sup>122</sup> Senator John Y. Stone of Glenwood also introduced a resolution which was referred to the Special Committee on Revision, declaring it to be the desire of the General Assembly "that the revision of the code made by the commissioners should be approved and adopted, and that said commissioners should be continued to incorporate into the same the acts of this session, under the same rules and instructions under which they acted in making said revision."<sup>123</sup> Senators Martin Read of Corydon and Frank T. Campbell of Newton also offered resolutions providing for the procedure of the Senate and the consideration of the Code.<sup>124</sup> On March 6th Senator Samuel Fairall again introduced a resolution making the commissioner's report the special order every day at 11 o'clock after March 7th.<sup>125</sup> This, also, was referred to the committee on revision. Later in the day Senator Charles Beardsley of Burlington introduced in the Senate, where it was adopted, a resolution similar to the one offered by Mr. Henry O. Pratt in the House.<sup>126</sup>

<sup>121</sup> *Senate Journal*, 1872, p. 243.

<sup>122</sup> *Senate Journal*, 1872, p. 243.

<sup>123</sup> *Senate Journal*, 1872, p. 244.

<sup>124</sup> *Senate Journal*, 1872, p. 244.

<sup>125</sup> *Senate Journal*, 1872, p. 257.

<sup>126</sup> *Senate Journal*, 1872, p. 263; see also note 119, above.

By March 20th the Senate had reached the point where it passed a resolution ordering its standing committees to report to the Senate their action on the sections of the Code referred to it.<sup>127</sup> On April 8th the Senate commenced the consideration of the "code series" provided for in a previous resolution. Twelve of these bills were passed before the close of the day, the last one being a bill concerning education.<sup>128</sup>

On the following day, April 9th, Senator George M. Maxwell of Iowa Center offered a resolution declaring: "That in the opinion of the Senate, the code cannot be properly considered at this session; and therefore it is our duty to close the general legislation and recommit the code to the commissioners under a law to be passed by this General Assembly."<sup>129</sup> Senator Benjamin F. Murray of Winterset offered a substitute fixing a day of adjournment and the date of meeting of the adjourned session. The substitute prevailed over the original motion, but on the vote on the resolution as amended it was defeated.<sup>130</sup>

Mr. John Beresheim of Council Bluffs offered in the House on April 10th what was perhaps the most important resolution of the session relative to the Code, when he proposed a concurrent resolution calling for adjournment on April 16, 1872, and the assembling in adjourned session in February, 1873, at which time nothing but the proposed code was to be considered.<sup>131</sup> The reasons for this move, as stated in the preamble, were four in number. It seems that the State Printer had not furnished part one to the members of the General Assembly until a late date, that the time had been too short to make a thorough examination,

<sup>127</sup> *Senate Journal*, 1872, p. 368.

<sup>128</sup> *Senate Journal*, 1872, pp. 509-514.

<sup>129</sup> *Senate Journal*, 1872, p. 527.

<sup>130</sup> *Senate Journal*, 1872, pp. 528, 529.

<sup>131</sup> *House Journal*, 1872, pp. 664, 665.

that numerous mistakes had been made in the printed bills, and that the Commissioners needed more time to perfect the work. Consequently, "in order to enable a more thorough examination by the Commissioners, and to provide for the incorporation of the laws of the present session into the Code," the resolution to meet in adjourned session was introduced.<sup>132</sup>

After a great amount of legislative sparring the resolution passed the House with an amendment as to date of adjournment, and was transmitted to the Senate.<sup>133</sup> Senator Benjamin F. Murray proposed to have a joint committee take the place of the Code Commissioners in examining the report during the recess of the legislature,<sup>134</sup> but this amendment was declared out of order. Upon being voted upon for engrossment it failed of passage, but on the following day, on April 12th, the bill was, on motion of Senator William Larrabee, reconsidered and passed.<sup>135</sup>

On April 17, 1872, Senator James S. Hurley from the Committee on the Judiciary reported Senate File No. 271, which was "a bill for an act providing for the revision and amendment of the statutes by a commission".<sup>136</sup> When this bill was considered two days later the old commission, consisting of Seevers, Knight, and Hammond, was reappointed and instructed to prepare the Code in the form of bills ready for passage.<sup>137</sup> The bill with a slight amendment passed the House by a vote of 67 to 2.<sup>138</sup>

<sup>132</sup> *House Journal*, 1872, p. 664.

<sup>133</sup> *House Journal*, 1872, pp. 669-672.

<sup>134</sup> *Senate Journal*, 1872, p. 552. Senator Murray's resolution called for a joint committee composed of Senators James S. Hurley, Joseph W. Havens, and Samuel H. Fairall, and Representatives Henry O. Pratt, Benton J. Hall, and William C. Evans.

<sup>135</sup> *Senate Journal*, 1872, pp. 555-557, 565, 566.

<sup>136</sup> *Senate Journal*, 1872, p. 610.

<sup>137</sup> *Senate Journal*, 1872, pp. 661, 662.

<sup>138</sup> *House Journal*, 1872, p. 861.

Just before adjourning the Senate passed a concurrent resolution providing for the distribution to each county auditor of two copies of parts one and two of the code as prepared by the codifying Commissioners.<sup>139</sup> On the same day Mr. James Wilson of Buckingham while reviewing in the course of his farewell speech the labors of the session, commented on the proposed Code as follows:

We have had a new revision of the laws before us and in our committees much of the session, which has prolonged its duration, but its magnitude and importance required more time than could be given it while the usual session work demanded our attention, which work we find increases as the State grows in population, and her varied industries expand.<sup>140</sup>

It is, indeed, very difficult to trace with any degree of clearness the legislative action on the Code during the session of 1872.<sup>141</sup> The General Assembly met on January 8th and adjourned on April 23rd, and in this period of nearly four months the members seemed at a loss to decide upon the proper method of considering the proposed Code. Strong leaders were in both houses — some of the strongest men who ever held seats in the legislature of Iowa — and the Code was prepared by able and distinguished men, yet at the close of the session very little had really been accomplished.<sup>142</sup> It served, however, to emphasize three

<sup>139</sup> *Senate Journal*, 1872, p. 737.

<sup>140</sup> *House Journal*, 1872, p. 911.

<sup>141</sup> A bill having a bearing on the proposed code but not considered in the paper was House File No. 289, "A bill for an act to provide for the publication of such laws as the Census Board may direct, in newspapers, and prohibiting the publication at public expense of the new code, and certain local laws." — *House Journal*, 1872, pp. 339, 624. A list of amendments to the *Revision of 1860* may be found in *House Journal*, 1872, pp. 993-995, and in the *Senate Journal*, 1872, pp. 800-802.

<sup>142</sup> Some of the leading men at this session of the General Assembly were James Wilson, John H. Gear, John P. Irish, John A. Kasson, and John F. Duncombe in the House; and William Larrabee, John Y. Stone, and Samuel H. Fairall in the Senate.



facts: that in creating a code of statutory law sufficient time is an important element in its preparation, that it can be best considered at a session where it will be the only question to be discussed, and that the directions to the compilers should be definite and at the same time comprehensive.<sup>143</sup>

Senate File No. 271, which was approved on the last day of the session, was similar to the act creating the Code Commission in 1870. The same men were re-appointed and instructed "to revise the statutes, including those of the present session, and prepare a compilation thereof, with such amendments thereto, as they deem proper". The act further provided that the Code should be prepared in the form of bills with the amendments in different kind of type from the existing law. Four hundred copies of these bills were to be printed and sent to the members of the legislature. The Commissioners were also given the privilege of printing "brief explanations of their recommendations, which shall accompany the bills by them prepared."<sup>144</sup>

The legislature was criticised by the press in no unlimited degree during this session and the criticism proved to be both friendly and otherwise in regard to its action on the Code. The *Burlington Weekly Hawk-Eye* of January 25, 1872, describes the reception of the report and manuscript Code and the action taken thereon.<sup>145</sup> An excellent summary of the legislative action is also to be found in this paper on March 14th. It declares that:

<sup>143</sup> The law creating the Commission of 1872 was in many respects sufficiently definite and comprehensive. It seems, however, that it could have been so worded that the Commissioners would not have had any doubts whatever as to their powers. The Code Commission of 1896 in its report declares that the Commission in 1872 prepared its report "with a somewhat restricted view of its powers" and that it "was to some extent unsatisfactory".— p. 2. This evidently would have been avoided had the Commission of 1872 been given specific directions and an ample amount of time.

<sup>144</sup> *Laws of Iowa, 1872 (Private)*, pp. 106, 107.

<sup>145</sup> *Burlington Weekly Hawk-Eye*, Thursday, January 25, 1872, 3rd col. p. 4.

The Legislature has been in session nearly two months. The work done in that time does not make a large showing. A United States Senator was elected — that took the better part of two weeks. In about ten days or two weeks thereafter a recess was taken, which consumed nearly two weeks more. Since coming together after the recess three weeks more have elapsed, and the real work of the session still remains to be done.

Your readers must not understand that the members have been idle, or that they are less intelligent or less industrious than their predecessors. About the usual number of bills have been introduced — something over one hundred and fifty in the Senate and about one hundred more in the House. The larger part of these bills have been considered in committee, and have necessarily involved a good deal of labor. A good many local bills have been passed — such as legalizing the illegal and informal acts of notary publics, school officers, and various corporations. The bills of general importance which have become laws may be counted on the fingers of one of your hands. The appropriation bills, the bills proposing to regulate railroad tariffs and railroad taxation, and various other general subjects, although some of them have received some attention in committee, nearly all remain to be considered by the two houses. The present indications are that these important matters will have to be gone through with hastily, or the session will be prolonged beyond the middle of April.

It was felt at the beginning of the session that the consideration of the Revision of 1860, as proposed by the Code Commissioners, would be a work of great magnitude, and one that would tax the energy and resources of the members to get through in a reasonable time and in a reasonably satisfactory manner. So at an early day a committee was appointed to devise the best plan for taking up and accomplishing that work. The Revision of the Commissioners was still in manuscript, their printed "report" being only an account of what they had done, and their manner of doing it, together with the few amendments proposed and the reasons therefor. The committee on revision decided that the first thing to be done was to put the manuscript in type, and parts one and two were placed in the hands of the State Printer. It was further decided that, when printed, the various Titles and Chapters should be referred to appropriate standing committees of the two Houses. The major portion going to the Judiciary, who were to meet in joint sessions.

Then there was to be a standing joint committee of the two Houses on revision, through whom all the other standing committees were to report to their respective Houses. This was the plan agreed upon reported and adopted.

So much was done before the recess. After re-assembling, the committees were a little slow in taking hold of the work assigned them, and in an evil hour a different plan for considering the Code was submitted and approved. This was for the respective houses to go into the committee of the whole, and take up and consider the recommendations of the commissioners as found in their printed "report." The first thing considered were those parts of the old Code, or rather the recommendations of the commissioners in relation to such parts as were marked "obsolete," "omitted," and "superseded." With scarcely any examination or verification, the work of the commissioners on these points was pronounced all right! Then came the proposed amendments. Two or three hours each day for a week have been spent by either house under this head, the respective bodies sitting in committee of the whole. The progress made has been very slow and very unsatisfactory. Nothing has been completed — and really nothing done, for the whole work will have to be gone over again when the same matters come to be finally acted on in the two houses.

It is now pretty evident to every one that the plan first proposed was the best, and that it will have to be returned to, if the Code is put into shape this session. A very large part of the work can be done much better as well as much more expeditiously by small committees, than by a committee of the whole house. And it would seem that one of two things will have to be agreed upon without much delay: either some rational and practical method of considering the code will have to be adopted and vigorously worked up to, or all idea of completing the work at this session (if adjournment is to take place at the usual time) will have to be abandoned. A few days will probably decide the matter.<sup>146</sup>

A few days before the close of the legislative session, "X.", the correspondent to a Burlington paper, in writing of the determination to adjourn, declared that such an act would be greeted with dissatisfaction by the people of the State. He further declared that had the original plan of

<sup>146</sup> *Burlington Weekly Hawk-Eye*, Thursday, March 14, 1872, p. 6.

considering the Code been adhered to it could have been completed.<sup>147</sup> *The Dubuque Weekly Times* was also very much opposed to an extra or adjourned session and urged the legislature not to call one, but to recommit the Code to the Commissioners with instructions to report at the next regular session of the General Assembly.<sup>148</sup>

Mr. John P. Irish of Iowa City, editor of the *Daily Press*, wrote from Des Moines on February 19, 1872, as follows:

So closes the week with but little work done. The people may well be astonished at the small results of the session thus far. There is a reason for this however that is not disreputable. The revision of the code is an immense work. The Commissioners, of whom our Prof. Hammond is one, have made an elaborate report, characterized by great ability and sound common sense. This report has to be traversed and each title, chapter and section enacted into a law. Nearly every matter of general legislation to be acted upon this winter is necessarily a part of this code. As for instance the proposed amendments to the revenue law changing penalties on delinquent taxes and the method of securing title to delinquent lands. The problem is whether we will wait until we are considering the report of the Code Commissioners, will wait until we reach the chapter on revenue, and therein insert the amendment, or whether we will go on and adopt the entire report of the commissioners, the same as any other law, then proceed with our legislation as usual, and at the end of the session authorize the same Code Commissioners to take the statutes which we pass this winter and incorporate them in their proper place in the Code, and then publish the whole as the "Code of 1872." No matter which way we approach the question it is full of difficulty. The Judiciary Committees are considering the matter and we will soon have it in shape.<sup>149</sup>

<sup>147</sup> *Burlington Weekly Hawkeye*, Thursday, April 18, 1872, p. 1.

<sup>148</sup> *The Dubuque Weekly Times*, Vol. XX, No. 11, Wednesday, March 13, 1872, p. 1, col. 1.

<sup>149</sup> *Daily Press* (Iowa City), Monday, February 19, 1872.

Another paper, in giving the news of the legislature remarked: "The new Code will undoubtedly be allowed to go over to the session two years hence. Or perhaps an extra session may be called next winter, to consider the Code. It would no doubt take at least three months to perfect the new Code."—*The Clinton Age*, Vol. IV, No. 47, Friday, March 8, 1872.

Despite the fact that the Code failed of passage in the regular session of the Fourteenth General Assembly, much important general legislation was enacted.<sup>150</sup> Some of the more important acts provided for the taxation of railway property,<sup>151</sup> for the levy of a tax for the building of libraries,<sup>152</sup> for the abolishment of capital punishment,<sup>153</sup> for the improvement of the State Library,<sup>154</sup> for the inspection of coal mines,<sup>155</sup> for the building of a new penitentiary<sup>156</sup> and for water-works in cities.<sup>157</sup> All these, and many other laws passed at this session were delivered to the Code Commission to incorporate into the bills they were ordered to report by January 1, 1873.<sup>158</sup>

#### THE SECOND REPORT OF THE COMMISSION

The second code proposed by the Commissioners was reported by titles, each one of which was printed as a legislative bill ready for enactment by the General Assembly.<sup>159</sup> At the end of each section is a citation showing from what act the section was taken, and in some instances, there are explanatory notes of the sections of the proposed work. One of the changes to be noted in part one is the creation of an Executive Council to take the place of the Census Board.<sup>160</sup> In Title IV the law in regard to libraries has

<sup>150</sup> See *Proceedings, Pioneer Law-Makers Association of Iowa*, 1894, p. 85.

<sup>151</sup> *Laws of Iowa*, 1872 (Public), Ch. 26, pp. 29-32.

<sup>152</sup> *Laws of Iowa*, 1872 (Public), Ch. 17, pp. 18, 19.

<sup>153</sup> *Laws of Iowa*, 1872 (Public), Ch. 136, pp. 139, 140.

<sup>154</sup> *Laws of Iowa*, 1872 (Public), Ch. 92, pp. 98-100.

<sup>155</sup> *Laws of Iowa*, 1872 (Public), Ch. 44, pp. 53, 54.

<sup>156</sup> *Laws of Iowa*, 1872 (Public), Ch. 43, pp. 49-52, also Ch. 108, pp. 111, 112.

<sup>157</sup> *Laws of Iowa*, 1872 (Public), Ch. 78, pp. 80-82.

<sup>158</sup> *Laws of Iowa*, 1872 (Private), Ch. 97, Secs. 1-3, p. 106.

<sup>159</sup> In citing the second work prepared by the Code Commissioners it will be called, *Proposed Code*, 1873, in order to distinguish it from the *Code of 1873*. The exact title of the *Proposed Code*, 1873, is *The Code of Iowa*, which might in some instances be confusing.

<sup>160</sup> *Proposed Code*, 1873, Title II, pp. 16, 17.

been rewritten to a considerable extent,<sup>161</sup> and in Title V a new form of oath was proposed for all civil officers.<sup>162</sup> A considerable number of changes are to be found in part two, which relates to private law.<sup>163</sup>

One of the most important changes in this part was chapter eleven on "Easements in Real Estate", which was taken from a statute passed by the Rhode Island legislature a short time before and which had been enacted prior to that time in Massachusetts.<sup>164</sup> All changes or amendments were printed in italics and it was thus made very easy to determine what was existing law and what was the work of the Commissioners.<sup>165</sup>

Owing to the preparation of the titles as separate bills the paging of this proposed code is not consecutive, but each bill is paged separately. There are, in all, twenty-six titles in the proposed work and it makes, when bound together, a large quarto-sized book.<sup>166</sup>

#### LEGISLATIVE ACTION AT THE ADJOURNED SESSION

The adjourned session of the legislature was to meet on the third Wednesday of January, 1873.<sup>167</sup> From some quarters there appears to have been some opposition to such an adjourned session and in commenting thereon the editor of *The Dubuque Weekly Times* urged that there be an immediate adjournment and that the Code Commissioners be

<sup>161</sup> *Proposed Code*, 1873, Title IV, p. 22.

<sup>162</sup> *Proposed Code*, 1873, Title V, p. 11.

<sup>163</sup> As has been noted elsewhere in this paper, part two of the *Revision of 1860* was not codified, but an attempt was made simply to arrange the existing laws.—*Revision of 1860*, Preface, p. iv.

<sup>164</sup> *Proposed Code*, 1873, Title XIII, p. 15.

<sup>165</sup> *Laws of Iowa*, 1872 (Private), p. 106.

<sup>166</sup> The volume of the *Proposed Code*, 1873, used by the writer has the following inscription on the fly-leaf: "Presented to the State Historical Society at Iowa City, March 5th, 1873, by Wm. G. Hammond, one of the Commissioners for the Revision of the Statutes".

<sup>167</sup> *Laws of Iowa*, 1872 (Private), p. 130.

allowed still another year in which to consider their report. This suggestion was made because the cost of the adjourned session would be, according to the writer, between forty and fifty thousand dollars, which would be a hard drain on the State treasury at that particular time.<sup>168</sup> After the legislature met the same paper declared that "they will, [the legislature] we venture to predict, find in the Code an important work well done, and in a shape that will demand little revision. Since it appears that the General Assembly are not disposed to adjourn at once and go home, leaving this work till the next regular session, let it dispose of the code promptly, during long daily sessions well filled with hard work in which buncombe has no share, and adjourn as soon as they can and do well the duties devolving upon them."<sup>169</sup>

On January 15, 1873, the Fourteenth General Assembly met in adjourned session and immediately began the consideration of the Code.<sup>170</sup> Mr. John A. Kasson, in the House, offered a resolution which contained six rules outlining the methods to be pursued in considering the Code.<sup>171</sup> This was referred to a select committee of the chairmen of the different standing committees of the House, who reported the resolution back on the following day with the recommendation that it pass.<sup>172</sup> Shortly afterwards, however, a concurrent resolution was received from the Senate providing that one house should consider all the even numbered titles and the other house the odd numbered titles and that neither house should consider bills submitted to the

<sup>168</sup> *The Dubuque Weekly Times*, Vol. XXI, No. 52, Wednesday, January 1, 1873.

<sup>169</sup> *The Dubuque Weekly Times*, Vol. XXI, No. 3, Wednesday, January 22, 1873.

<sup>170</sup> *House Journal*, 1873, p. 3.

<sup>171</sup> *House Journal*, 1873, p. 4.

<sup>172</sup> *House Journal*, 1873, p. 5; see also p. 6.

other house, until such other house had finished its consideration and committed it to the opposite branch of the legislature.<sup>173</sup> This plan appeared to meet with favor, as the resolution was accepted by both houses.<sup>174</sup>

On the opening day in the Senate a committee, consisting of Senators Charles Beardsley and John J. Russell, was appointed to ascertain the condition of the work of the Code Commission — how much had been completed and the portion yet remaining to be done.<sup>175</sup> Their report on the following day showed that one title was yet in the hands of the Commission and that the remainder had been printed or was in the hands of the printer.<sup>176</sup>

During the latter part of January a Senate concurrent resolution was introduced providing for the appointment of a committee of five to provide for the publication of the Code.<sup>177</sup> From the Senate there were appointed Senators James S. Hurley and Samuel H. Fairall. Representatives John W. Green, George Paul, and John A. Kasson were appointed from the House.<sup>178</sup> A joint resolution adopted at about the same time provided that no acts of the adjourned session should be made a part of the Code unless an act to that effect were subsequently passed.<sup>179</sup>

In commenting upon the joint committee above mentioned a prominent newspaper remarked:

<sup>173</sup> *House Journal*, 1873, p. 9. See also *Senate Journal*, 1873, p. 14. A list of the bills introduced in both houses relating to the revised statutes may be found in the *House Journal*, 1873, p. 7, and also on pp. 40, 41, 294-296, 302, 303; and in the *Senate Journal*, 1873, pp. 4, 6-8, 357, 358, 364-367. A complete list of amendments made by the General Assembly to the report of the Code Commissioners may be found in *House Journal*, 1873, pp. 221-288.

<sup>174</sup> *House Journal*, 1873, p. 10; see also *Senate Journal*, 1873, p. 16.

<sup>175</sup> *Senate Journal*, 1873, p. 8. See also p. 9.

<sup>176</sup> *Senate Journal*, 1873, p. 11.

<sup>177</sup> *Senate Journal*, 1873, pp. 53, 71; *House Journal*, 1873, pp. 42, 45.

<sup>178</sup> *Senate Journal*, 1873, p. 75; *House Journal*, 1873, p. 49.

<sup>179</sup> *Senate Journal*, 1873, pp. 64, 65, 68, 71; *House Journal*, 1873, pp. 40, 41.



The committee appointed to prepare a bill for printing the Code, have one drafted, and it will probably be presented in a day or two. It is expected that Judge Wm. H. Seevers, of Oskaloosa, one of the Commissioners will be selected to edit the work and superintend the printing. The Code as now prepared will be somewhat smaller than the Revision of 1860, the laws being a good deal condensed, and much unnecessary matter that finds a place in the old, being left out in the new. Should the work be done by the State Printer and Binder, as the bill spoken of proposes, it can be completed and ready for distribution, two or three months before the time that it is to go into operation, which is fixed at September first.<sup>180</sup>

During the adjourned session the legislature appears to have exhibited a great deal of energy and ability in its consideration of the Code and to have labored hard to complete it in the shortest practicable period.<sup>181</sup> In the House Mr. John A. Kasson appears to have taken a leading part, being chairman of the Committee of the Whole House;<sup>182</sup> while Mr. James S. Hurley in the Senate, chairman of the Judiciary Committee, was foremost in pushing the work in the upper house. The press almost without exception described the legislature as a hard-working body and a correspondent to *The Dubuque Weekly Times* declared that the "venerable and somewhat noisy gassers have settled down to a season of silence!"<sup>183</sup> The editor of the same paper in a later number informed his readers that "the

<sup>180</sup> *Burlington Weekly Hawk-Eye*, Thursday, February 6, 1873.

<sup>181</sup> In speaking of the work on the Code, Mr. John P. Irish writes: "It is hard to hold the Houses to the dull work of codifying. There are no 'field days' as of old, and the lobbies are either entirely vacant or peppered only by a few bored and drowsy spectators."—*Daily Press* (Iowa City), February 1, 1873. Despite this statement a large amount of work was accomplished daily, as a reading of the journals of the two houses will clearly show.

<sup>182</sup> On the last day of the session the House of Representatives adopted the following resolution: "That we tender to Hon. J. A. Kasson our thanks, for his kind and efficient labors as chairman of committee of the whole."—*House Journal*, 1873, p. 217.

<sup>183</sup> *The Dubuque Weekly Times*, Vol. XXI, No. 3, Wednesday, January 22, 1873.

legislative work of codifying the laws goes on with an industry and success that seems sure in its promise that at the end of thirty days the session will come to the close intended."<sup>184</sup>

Honorable John P. Irish declared that "the work on the Code progresses and attracts but little notice. Public attention is largely focussed upon the Rankin investigation and the attempt to force the State institutions to pay back into the treasury a moiety of their appropriations."<sup>185</sup> While the legislature was considering part three the same editor wrote as follows:

The Legislature is now working on the practice part of the code and the lawyers are shooting *demurrers, certioraris, suppoenos, procedendos*, and other Latin litter at each other in a way to confuse us laymen.<sup>186</sup>

During the last day of the session a joint resolution was passed which excluded all private and temporary acts from the Code.<sup>187</sup> Previously, however, on the 8th of February, Senator James S. Hurley from the select committee had reported a bill providing for the publication of the Code.<sup>188</sup> After being considered, ten days later, the bill appears to have been dropped and House File No. 32 substituted. This was also a bill providing for the publication of the Code.<sup>189</sup> This bill had passed the House on February 18th by a unanimous vote and passed the Senate on the day following by a vote of 37 to 2.<sup>190</sup>

<sup>184</sup> *The Dubuque Weekly Times*, Vol. XXI, No. 6, Wednesday, February 12, 1873.

<sup>185</sup> *Daily Press* (Iowa City), Thursday, January 23, 1873.

<sup>186</sup> *Daily Press* (Iowa City), Wednesday, January 29, 1873.

<sup>187</sup> *House Journal*, 1873, p. 214; *Senate Journal*, 1873, pp. 345, 346. See also *Laws of Iowa*, 1873, p. 25.

<sup>188</sup> *Senate Journal*, 1873, pp. 187, 306. Methods of considering the proposed Code are also to be found in *Senate Journal*, 1873, pp. 107, 190, 191.

<sup>189</sup> *Senate Journal*, 1873, pp. 293, 308-10, 325, 326, 328. Also *House Journal*, 1873, pp. 168, 180, 181, 199, 200.

<sup>190</sup> *Senate Journal*, 1873, p. 328.

The act which was thus passed provided that William H. Seevers be employed at a salary of \$2,000 to edit the Code and deliver the same to the State Printer as soon as possible. The State Printer in turn was to print fifteen thousand copies, which should contain marginal notes and a complete index. In addition, the Declaration of Independence, the constitutions of Iowa and the United States, and the naturalization laws were to be included in an appendix. The binding was ordered to be done by the State Binder, who was to begin his part of the work not later than May 1, 1873. Five thousand copies were to be distributed among the counties for sale at three dollars per volume, the Secretary of State being allowed twelve hundred dollars for the work of distribution.<sup>191</sup>

The work of the adjourned session seems to have been quite universally approved by the press of the State. A Clinton paper, after calling attention to the fact that the session had lasted only thirty-six days, declared that the members had possessed a spirit of hard work, no member had "made a long speech and the short ones have been brief and to the point."<sup>192</sup> In commenting on the Code itself the same paper made the following suggestion: "Let the new Code go into operation and be tested in all its divisions before a spirit of criticism is indulged in."<sup>193</sup> *The Cedar Rapids Times* remarked that "the main object—the revision of the Code—has been the principal and almost the only thing accomplished, since nearly all the proposed changes in existing laws have been defeated, including the one re-establishing capital punishment. But this revision has been a great work of itself, and if done well will have been sufficient work for a session of thirty-six days."<sup>194</sup>

<sup>191</sup> *Laws of Iowa*, 1873, Ch. IX, pp. 13-15.

<sup>192</sup> *The Clinton Age*, Vol. V, No. 46, Friday, February 28, 1873.

<sup>193</sup> *The Clinton Age*, Vol. V, No. 46, Friday, February 28, 1873.

<sup>194</sup> *The Cedar Rapids Times*, Vol. XXII, No. 21, Thursday, February 27, 1873.

The same paper said of the legislature that it had "performed its work speedily and well."<sup>195</sup>

Even the papers that were opposed to the adjourned session were forced to admit the diligence displayed in passing the proposed code, as the following quotation from *The Dubuque Weekly Times* will bear testimony:

The legislature adjourned yesterday *sine die*, having finished the Code, and passed a few of the inevitable legalizing acts. Unnecessary as we believe the session to have been, we cannot but do the members the justice of saying that they have worked with commendable diligence since they came together at this adjourned meeting, and that we believe their work to have been generally well done. Had a little of the spirit manifested at this session actuated the members in the last, the \$45,000 which the session has cost might have been saved to the State.<sup>196</sup>

#### CHARACTER AND CONTENTS OF THE CODE OF 1873

The *Code of 1873* was of the same size as the *Revision of 1860*, though containing one hundred twenty-one less pages.<sup>197</sup> It took effect on September 1, 1873, and provided that "all public and general statutes passed prior to the present session of the general assembly, and all public and special acts, the subjects whereof are revised in this code, or which are repugnant to the provisions thereof, are hereby repealed, subject to the limitations and with the exceptions herein expressed."<sup>198</sup>

<sup>195</sup> *The Cedar Rapids Times*, Vol. XXII, No. 21, Thursday, February 27, 1873.

<sup>196</sup> *The Dubuque Weekly Times*, Vol. XXI, No. 8, Wednesday, February 26, 1873. Good accounts of the proceedings of the legislature can also be found in the above paper on Wednesday, January 22, 1873, and on Wednesday, February 5, 12, and 19, 1873; in the *Daily Press* (Iowa City), Thursday, January 30, 1873; and in the *Burlington Weekly Hawk-Eye* of Thursday, February 13, February 27, March 6, and March 13, 1873.

<sup>197</sup> The copy used by the writer in the preparation of this article was formerly Governor Kirkwood's copy and bears his signature on the cover.

<sup>198</sup> *Code of 1873*, Sec. 47, p. 9. See also Sec. 49.

In the first volume of the interleaved edition of the *Code of 1873* the title page is slightly different from the title page in the regular volume, giving G. W.

There is no introduction or explanations of particular sections to be found anywhere in the book, and it is also entirely free from extraneous matter, such as annotations or citations to decisions of the Supreme Court. There is, however, an excellent marginal index giving the corresponding section in each case in the *Revision of 1860*. The index is contained in 248 pages, but could be improved upon by the additional use of cross references. The appendix contains only a few of the most important public documents, such as the Declaration of Independence, the Constitution of the United States, and the Constitution of Iowa.

The changes to be found in this Code are so numerous that it is not practicable to discuss them in this connection. One new feature which should be mentioned, however, is the provision for a Circuit Court, which was later repealed by the Twenty-first General Assembly.<sup>199</sup> The proposed code submitted to the General Assembly in 1873 has all the numerous changes and amendments printed in italics. Since this was the first real revision of parts one and two which had been made since 1851 it is only natural that scores of changes are to be found therein.

#### SUBSEQUENT LEGISLATION

The new Code, however, evidently was hastily or carelessly constructed in some parts, for a considerable number of mistakes soon became apparent.<sup>200</sup> Governor Carpenter

Edwards as the printer and not mentioning R. P. Clarkson, who completed the Code from page 640.

<sup>199</sup> *Code of 1873*, Sec. 162, pp. 28, 29.

The Circuit Court had been first established by an act passed during the Twelfth General Assembly.—*Laws of Iowa*, 1868, Ch. 86, pp. 113–120. The act abolishing the Circuit Court is found in the *Laws of Iowa*, 1886, Ch. 134.

<sup>200</sup> In the preface to McClain's *Annotated Code and Statutes*, 1888, p. iv, the author declares, "When the first edition of this work was published in 1880, a careful comparison was made between the Code as printed by the authority of the state and the original rolls thereof, duly authenticated and preserved in the office of the Secretary of State. As a result of this examination a considerable number of discrepancies were found."

called attention to the fact that "imperfections, oversights, and errors" were contained in the Code and that these would need correcting. He further suggested that in making amendments the entire section be reprinted in the session laws as amended, in order that all might know what the existing law was.<sup>201</sup> Later writers have also commented upon the discrepancies to be found in the work.<sup>202</sup>

The *Code of 1873* served as the official code of Iowa from 1873 to 1897, but during this time various propositions were made looking toward the reprinting or revision of the laws. On January 13, 1880, Governor John H. Gear in his first biennial message suggested that certain parts of the Code, dealing with the cost of criminal prosecutions, should be repealed, as the resulting expenses were increasing very rapidly. In the same message he stated that seven hundred copies of the Code still remained on hand and that as private individuals were preparing editions of the Code he did not think it advisable for the State to order a reprint. He further declared that "the present Code only went into effect September 1st, 1873, and as it is possible that the voters of the state will declare in favor of a constitutional convention in 1880, which would necessitate much new legislation, it would seem both impolitic and unwise to incur the expense of a re-codification at this time."<sup>203</sup>

Several years later, in January, 1888, Governor William Larrabee stated in his first biennial message that he had addressed letters to the Judges of the State asking them for suggestions relative to amendments which should be

<sup>201</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. IV, pp. 79, 80.

<sup>202</sup> Judge Wm. E. Miller in speaking of the discrepancies stated, "In the publication of the State edition of the Code numerous errors occurred, some of which changed the sense and effect of the law."—Miller's *Revised and Annotated Code of Iowa*, 1880, Vol. I, Preface, p. i.

<sup>203</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. V, pp. 71, 85, 86.

made to the statutes. Many of the judges replied proposing changes to be made.<sup>204</sup> The Governor in the same message called the attention of the legislature to the dangers of hasty and ill-planned legislation. He declared:

I am not, and I feel sure that you will not be, unmindful of the fact that great care should be taken in the change and amendment of our statutes. The whole body of our laws is a growth of many years, and it should not be unnecessarily or lightly interfered with. Only such additions and changes should be made as justice and the public welfare clearly require.<sup>205</sup>

The edition of the Code published in 1873 was, as stated above, practically exhausted in 1880, but the publication of annotated codes by Judge William E. Miller and Mr. Emlin McClain in that year largely did away with the necessity of a new official publication.<sup>206</sup> Had there been no works of a private nature put forth a new code would have undoubtedly been prepared sometime in the eighties.<sup>207</sup> The use of the *Code of 1873* was limited chiefly after 1880 to county and township officers,<sup>208</sup> the members of the legislature generally purchasing the private works for their own use during the sessions of the General Assembly.<sup>209</sup> This was done

<sup>204</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 80.

<sup>205</sup> Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VI, p. 85. At page 195 the Governor said: "The statutes of the territory of Iowa, which are now out of print, ought to be compiled and republished, together with those of the territories of Michigan and Wisconsin affecting Iowa."

<sup>206</sup> The history of the private compilations will be dealt with in a subsequent paper.

<sup>207</sup> By 1880 there was a large number of amendments, repeals, etc., to the *Code of 1873*. A list of statutes amendatory to the *Code of 1873* may be found in Miller's *Revised and Annotated Code of Iowa*, 1880, Vol. I, pp. xvi-xxi. Also Preface, p. i.

<sup>208</sup> *Code of 1897*, Preface, p. iv.

<sup>209</sup> One of the first acts in nearly every General Assembly is to order a copy of the Code for each member. After 1880 each member was usually allowed his choice of either McClain's or Miller's work.

for the reason that a vast amount of legislation enacted subsequent to the *Code of 1873* could only be discovered by going through several volumes of session laws, but in either McClain's or Miller's code it was brought down to date.

The legislation subsequent to 1873 concerning the Code does not appear to be of any considerable importance, although some action appears to have been taken at almost every session. In 1874 a joint resolution was introduced in the House by Mr. C. A. L. Roszell of Clarksville providing that when amendments were made to the Code the amended section should be printed in full, but it does not appear to have succeeded in passing.<sup>210</sup> Two years later Mr. Josiah Given offered a similar resolution which was adopted by the House, but appears never to have passed the Senate.<sup>211</sup>

The Senate of 1874 also had its attention called to two special matters relating to the *Code of 1873*. On February 3, 1874, Senator Dennis N. Cooley offered a resolution which was passed directing the Judiciary Committee to ascertain what action would be necessary to so fix the Code and laws that they would be receivable in evidence in the United States Courts. Owing to the fact that the *Code of 1873* did not bear the seal of the State it did not meet the requirements of the federal law in regard to evidence.<sup>212</sup>

A month later, on March 3, 1874, Senator Henry W. Rothert introduced Senate File No. 208 which was "a bill for an act to legalize the edition of the Code of 1873, published by Mills & Co."<sup>213</sup> After being referred to the Judiciary Committee the bill was by them recommended for indefinite postponement.<sup>214</sup>

<sup>210</sup> *House Journal*, 1874, pp. 72, 73.

<sup>211</sup> *House Journal*, 1876, p. 26.

<sup>212</sup> *Senate Journal*, 1874, pp. 73, 74. No further action appears to have been taken by the Senate in this matter.

<sup>213</sup> *Senate Journal*, 1874, p. 234. This Code is described below, see p. 218.

<sup>214</sup> *Senate Journal*, 1874, p. 255.



In 1878 Representative Frederick M. Knoll introduced "a bill for an act to create a board of commissioners, to codify and revise the school laws of Iowa."<sup>215</sup> Nothing, however, seems to have been done in regard to this bill, but during the last days of the session a joint resolution was adopted providing for the publication and distribution of the school laws of Iowa.<sup>216</sup> An attempt to compile and publish the road laws at this session failed of passage in the House.<sup>217</sup>

Various petitions asking for revisions of the road and school laws were received in the Senate during the Seventeenth General Assembly, perhaps the most important being the one presented by Senator Samuel L. Bestow from the Supervisors' Convention, "asking a general revision of the Code, and the public acts of the Sixteenth General Assembly."<sup>218</sup>

Mr. William J. Knight of Dubuque in 1880 offered a resolution in the House requiring the members of the legislature to either pay for the Codes received at the opening of the session or to return them. The reasons for such a resolution were stated to be the desirability of strict economy, the scarcity of the edition, and the doubtfulness whether or

<sup>215</sup> *House Journal*, 1878, p. 52.

<sup>216</sup> *House Journal*, 1878, p. 650. See also p. 652.

Though this joint resolution appears by the journals of the houses to have been passed by each, it is not to be found in the laws of that year. Mr. C. C. Stiles, Superintendent of the Department of Classification and Arrangement of the Public Archives of Iowa, in writing of the above resolution declared:

"I find the resolution on file here that you refer to in your letter. The resolution has the following written on the back:

" 'Read 1st. & 2nd. times. Rules suspended and passed the Senate 3/26/78. McCargar, 1st. Asst. Sec.' also written with lead pencil 'passed.' There is nothing to indicate that it passed the House. It does not appear on the record of enrolled bills and resolutions (this record shows the title, date of approval, publication &c) It does not appear in the bound volumes of engrossed bills and resolutions that are on file in the office of Secretary of State."

<sup>217</sup> *House Journal*, 1878, pp. 43, 112, 128, 202, 401, 402.

<sup>218</sup> *Senate Journal*, 1878, p. 53. See also pp. 45, 106.

not the legislature could donate State property to its members. After creating a considerable amount of comment the resolution was referred to the Judiciary Committee and appears never to have been reported therefrom.<sup>219</sup>

During 1880 Judge William E. Miller and Mr. Emlin McClain prepared compilations of the statute law of Iowa. These works were annotated and embraced the *Code of 1873* as changed by legislation, and the new statutes passed up to the Nineteenth General Assembly. An act passed on March 27, 1880, made Miller's Code receivable in evidence,<sup>220</sup> while McClain's Code was made likewise receivable by an act passed two years later.<sup>221</sup>

A joint resolution was proposed in the House of Representatives in 1884 looking toward a convention of States to secure uniform legislation on various subjects. This resolution was reported upon favorably by the Judiciary Committee, but does not appear to have become a law.<sup>222</sup> Various petitions were presented at the same session praying for a change in the Code and for court reform.<sup>223</sup> On March 1st, Senator Gifford S. Robinson of Storm Lake offered the following resolution which was adopted:

*Resolved by the Senate,* That the Committee on Printing be instructed to investigate the facts and to report to the Senate as soon as practicable, as follows:

1. The number of copies of the Code, and of the session laws of the Fifteenth and subsequent General Assemblies now in possession of the State, and subject to distribution for the use of public officers.

<sup>219</sup> *House Journal*, 1880, pp. 507, 508.

<sup>220</sup> *Miller's Revised and Annotated Code of Iowa*, 1880, Vol. I, p. iii.

<sup>221</sup> *Laws of Iowa*, 1882, pp. 5, 6.

<sup>222</sup> *House Journal*, 1884, p. 346.

<sup>223</sup> *Senate Journal*, 1884, pp. 128, 318. The Senate Judiciary Committee was ordered early in the session "to inquire into, and report by bill or otherwise, such amendments as are necessary to the criminal code of the State, to make more certain and speedy the detection, conviction and punishment of criminals and the prevention of crime."— See p. 78.

2. The probable time when the present supply of such copies of the Code and session laws will be exhausted.

3. The necessity, if any, for a revision of the laws, and providing of copies of the same for the use of public officers in the State.<sup>224</sup>

On the sixth of March the committee reported that there were four hundred and fifty copies of the Code on hand, which would supply official needs for about six years.<sup>225</sup>

In 1888 a direct attempt was made to revise and codify the laws. On February 21st Mr. L. A. Riley of Wapello offered House File No. 472, which was "a bill for an act to provide for the revision and codification of the Statutes of Iowa, creating a commission therefor and defining their duties; providing for the publication and distribution of their report."<sup>226</sup> After receiving a number of amendments the bill was passed on April 6, 1888, by the decisive vote of 73 to 2.<sup>227</sup> Owing, however, to the great amount of legislation pending in the Senate this bill failed of consideration and did not become a law.<sup>228</sup>

During the session of the Twenty-fourth General Assembly a large number of petitions were received in the House of Representatives asking for a revision of the revenue laws.<sup>229</sup> The result was the passage of Senate File

<sup>224</sup> *Senate Journal*, 1884, p. 255.

<sup>225</sup> *Senate Journal*, 1884, pp. 281, 282.

<sup>226</sup> *House Journal*, 1888, p. 349.

<sup>227</sup> *House Journal*, 1888, pp. 897, 898.

<sup>228</sup> *Senate Journal*, 1888, pp. 907, 996.

An idea of the great number of changes both in the statutes and in the Code made during this session of the legislature may be gained by looking at the *Senate Journal*, 1888, pp. 1029-31, 1061. In the *Senate Journal*, 1890, p. 31, there may also be found a list of the volumes of the session laws and the quantity of each in the State. In 1890 a bill was also introduced in the House providing for the compiling and reprinting of the Territorial statutes. It appears never to have been reported from the committee to which it was referred. — *House Journal*, 1890, p. 397.

<sup>229</sup> *House Journal*, 1892, pp. 84, 85, 106, 107, 108, 115, 120, 132, 133, 144, 145, 166, etc.

No. 383, which provided for the creation of a tax commission of four persons "to studiously and carefully examine the revenue laws of the state and report necessary and desirable changes to the Twenty-fifth General Assembly."<sup>230</sup> A bill was also introduced in the House the purpose of which was to create a commission "to codify and amend the statutes of Iowa relating to the valuation of real and personal property, the assessment, levying and collection of taxes."<sup>231</sup> The bill, however, never became a law.<sup>232</sup>

The vast amount of legislation passed in the years immediately following 1873 caused the *Code of 1873* to become quickly out of date. This defect was remedied, as has been seen, in 1880 by the preparation of two private works,<sup>233</sup> but it was not until 1894 that the legislature took definite action by appointing in that year a commission to revise and codify the laws.<sup>234</sup> Their report was the foundation of the *Code of 1897* and was in "accordance with the plan finally adopted by the former Commission,"—the Commission of 1873.<sup>235</sup> In addition to being sadly out of date, the *Code of 1873* had likewise been out of print for a number of years.<sup>236</sup>

<sup>230</sup> *Laws of Iowa*, 1892, Ch. 72, pp. 100, 101. The members of this commission were Charles E. Whiting, Charles A. Clark, E. C. Lane, and August Post. These gentlemen reported in July, 1893, recommending a bill for the revision of the State revenue laws.—*Report of the Revenue Commission*, 1893. See also Brindley's *History of Taxation in Iowa*, index.

<sup>231</sup> *House Journal*, 1892, p. 97.

<sup>232</sup> Various compilations of laws have often been issued by the State for the use of a particular class. For instance, the road laws, the school laws and the revenue laws have been issued at various times. These are, however, only a collection of the existing laws on the subject, with a list of forms usually appended.

<sup>233</sup> Miller's *Revised and Annotated Code of Iowa*, 1880, Vol. I, Preface, p. i. Mr. Miller states that the great number of amendments was one of the chief reasons for the bringing out of his Code.

<sup>234</sup> *Laws of Iowa*, 1894, Ch. 115, pp. 111, 112.

<sup>235</sup> *Report of Code Commissioners*, 1896, p. 2.

<sup>236</sup> *Code of 1897*, Preface, p. iv.

## THE MILLS AND COMPANY EDITION

The law publishing firm of Mills and Company of Des Moines brought out an edition of the *Code of 1873* in the early summer of that year, about six weeks before the appearance of the official edition. The title page of this edition reads:

THE CODE: CONTAINING ALL THE STATUTES OF THE STATE OF IOWA, of a general nature, passed at the adjourned session of the Fourteenth General Assembly. Uniform with the edition published by the State. Des Moines, Iowa: MILLS & Co., Law Publishers, 1873.

This edition was printed in three forms. The regular one volume work was printed to page 640 by the State Printer from the same type as used in the official edition, and delivery of the work commenced on July 20, 1873. This volume was sold at four dollars per volume. The entire work contained 738 pages, besides the index which occupied 183 pages.<sup>237</sup> In addition to the regular one-volume edition there was an interleaved form which sold for seven dollars and an interleaved form in two volumes that sold for eight dollars.<sup>238</sup>

The State Census Board, which corresponds to the present Executive Council, evidently did not care to have private concerns compete with the State in the publication of the Code and so on June 23, 1873, it addressed a letter to the Attorney General asking whether or not the State Census Board could "enjoin the publication of the one thousand copies of the code of Iowa, 1873, now being published by Messrs. Mills & Co?"<sup>239</sup>

<sup>237</sup> *The Western Jurist*, 1873, Vol. VII, pp. 469, 470.

The writer has not been able to secure a copy of the private edition, either in Iowa City or at the State Library at Des Moines. The title page is consequently copied from the one given in the reviewer's notice.

<sup>238</sup> *The Western Jurist*, 1873, Vol. VII, p. 475.

<sup>239</sup> *The Western Jurist*, 1873, Vol. VII, p. 473.

The Attorney General, M. E. Cutts, gave as his opinion that as there was no law prohibiting such a work, and that as the State had failed to copyright the official edition, there could not be an injunction issued to restrain Mills and Company from publishing their work.<sup>240</sup>

In commenting upon this episode one leading newspaper remarks:

It seems queer that anybody would think of such injunction. When it is considered that, although the Code goes into effect Sept. 1st, the State has not a single copy out yet, and probably will not have by that time, while Mills & Co. are already delivering the copies printed by them, it would look more reasonable to vote them public thanks than to subject them to loss in their enterprise by enjoining them. This whole Code business has been botched from beginning to end. The Legislature, in a fit of economy, voted that no part of it should be published in the newspapers. The result is all the important changes made in the Code go into operation in a few days and the people have had no opportunity to know what they are. The old tyrant who posted his laws so high that nobody could see them and then put to death those who violated them, seems to have been the model followed by our law-makers in this matter.<sup>241</sup>

This work, nevertheless, appears to have been issued as advertised and in 1874 an attempt was made to legalize the edition, but the bill was recommended for indefinite postponement by the Senate Judiciary Committee.<sup>242</sup>

#### CONCLUSIONS

The *Code of 1873* took effect on the first day of September, 1873,<sup>243</sup> and remained in force as the official code of

<sup>240</sup> *The Western Jurist*, 1873, Vol. VII, pp. 473, 474.

<sup>241</sup> *The Western Jurist*, 1873, Vol. VII, p. 475. This is a clipping from the *Muscatine Journal*.

<sup>242</sup> See notes 213 and 214 above. See also *Senate Journal*, 1874, pp. 234, and 255. It is of interest to note that in an act of May 5, 1897, the legislature made it a misdemeanor for any one to publish the laws of the State in competition with the official publication.—*Code of Iowa*, 1897, Sec. 27, p. 5.

<sup>243</sup> *Code of 1873*, Sec. 49, p. 9.

Iowa until ninety days after the adjournment of the extra session of the Twenty-sixth General Assembly.<sup>244</sup> It thus served from 1873 until 1897, a period of twenty-four years. Although having the longest official existence of any Iowa compilation of law, it must not be understood that it was in general use during all this period. In fact, after 1880, its use became less and less each year, the use of McClain's and Miller's codes, on the other hand, becoming greater. It might be safely stated that for a number of years the *Code of 1873* was so out of date that it was rarely if ever used.<sup>245</sup>

The *Code of 1873* was prepared by three men of high scholarship and great learning in the law. The work was carefully reviewed in the legislature, at two different periods, by men of ability and with an accurate knowledge of the needs of the State. The result was one of the best codes ever prepared in the State of Iowa. It attempted to condense the acts of the legislature and the existing laws into the fewest possible words, consistent with clearness and the intent of the law-makers. Where an improvement could be made, the Commissioners had the power to and often did alter the phraseology of the existing law.

The *Code of 1873* is free of all luggage. It contains no remarks, introduction, preface, or annotations. It attempted to give the law in a logical and orderly method, in clear and unambiguous language, capable of being understood by all; and although not the equal of the *Code of 1851*, it succeeded admirably in realizing the hopes of its makers.

CLIFFORD POWELL

THE STATE HISTORICAL SOCIETY OF IOWA  
IOWA CITY

<sup>244</sup> *Code of 1897*, Sec. 50, p. 126.

<sup>245</sup> *Code of 1897*, Preface, p. iv.