

HISTORY OF THE CODES OF IOWA LAW

V

THE CODE OF 1897

The last official code of the State of Iowa, the *Code of 1897*, dates in reality from the year 1894 when the Twenty-fifth General Assembly created a commission to revise and codify the laws.¹ The need for such a codification had been apparent for several years. The *Code of 1873* had long been out of print and was not even used to any considerable extent by people who desired to consult the laws. Two private codes had made their appearance in the eighties and had come into general use. In fact, there was no official code to which the citizens of Iowa could refer to learn all the law on any given subject, for since the year 1873 the statutes were scattered in several volumes of session laws.²

In addition to the above reasons for the preparation of the *Code of 1897* there were others of a more immediate nature. During the legislative session of 1892 a large number of petitions had been presented to the General Assembly praying for a change in the revenue laws. A commission was accordingly created by the Twenty-fourth General Assembly which suggested changes to be made in these laws.³ Then, too, various attempts had been made in 1894

¹ *Laws of Iowa*, 1894, pp. 111, 112.

² For an article on *The Code of 1873*, see Powell's *History of the Codes of Iowa Law* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. XI, pp. 166-220.

³ These petitions are mentioned in *House Journal*, 1892, pp. 78, 84, 85, 106-108, 115, 120, 132, 144, 145, 146, etc. The act creating the Commission may be found in *Laws of Iowa*, 1892, pp. 100, 101. See also *Report of the Revenue Commission*, 1893.

to codify and revise the statutes relating to particular subjects.⁴ Believing that the laws should not be amended in piece-meal fashion, but that the time had arrived for a general and complete amendment, a Code Commission of five members was created.

CREATION OF THE CODE COMMISSION

The Twenty-fifth General Assembly convened in Des Moines on the eighth day of January, 1894.⁵ In the House of Representatives Mr. James H. Trewin, representing the county of Allamakee, appears to have been the champion of codification. On January 16, 1894, Mr. Trewin offered the following concurrent resolution:

Resolved by the House of Representatives, the Senate concurring,
That a commission consisting of seven members be appointed for the purpose of codifying the laws of the State of Iowa.⁶

Shortly afterward Mr. Trewin introduced a second bill, House File No. 186, which was "a bill for an act to create a commission to revise and codify the laws of Iowa and defining its duties and providing for the publication and distribution of its report."⁷

Previously, however, on January 24, 1894, Mr. M. D. Reed of Exira had introduced House File No. 108, which was "a bill for an act providing for a commission to revise the school laws of the State."⁸ This bill was referred to the Committee on Schools and Text-books which reported on February 1st through its chairman, S. J. Van Gilder, recommending its passage.⁹ When the above bill was considered

⁴ *Senate Journal*, 1894, pp. 85, 117, 275. See also, *House Journal*, 1894, pp. 10, 462, 463, 883, 884.

⁵ *Iowa Official Register*, 1911-12, p. 125.

⁶ *House Journal*, 1894, p. 60.

⁷ *House Journal*, 1894, p. 112.

⁸ *House Journal*, 1894, p. 94.

⁹ *House Journal*, 1894, p. 174.

Mr. Trewin moved that his bill, House File No. 186, be substituted for the Reed bill and the motion carried by the vote of 72 to 20.¹⁰ The bill passed the Senate on March 8, 1894.¹¹

On March 22, 1894, Mr. Trewin offered a resolution which was adopted, calling upon the House to elect the two members that the bill provided should be elected by the House.¹² The resolution further declared that of the two men elected, one should be a Republican and the other a Democrat. Accordingly on the 28th of March, 1894, Mr. Trewin offered the following resolution which was unanimously adopted:

Resolved, That John Y. Stone and Charles Baker be and are hereby elected on the part of the House Code Commissioners of Iowa, as provided by the act creating a commission to revise and codify the laws.¹³

On the last day of the session an unsuccessful attempt was made in the House to refer two of the most important measures pending before the General Assembly to the Code Commission, as the House did not have sufficient time to adequately consider them.¹⁴

In the Senate on January 26, 1894, Senator James H. Jamison of Osceola introduced Senate File No. 89, which provided for a "commission to revise and codify the laws of Iowa".¹⁵ Nearly a month later, on the 14th of February Mr. M. W. Harmon of Independence, the chairman of the Senate Judiciary Committee, reported the bill back and among the changes suggested was that the following section should stand in place of the original:

That a commission consisting of five persons learned in the law three of whom shall have been engaged in actual and continuous

¹⁰ *House Journal*, 1894, pp. 367, 368. *Senate Journal*, 1894, p. 388.

¹¹ *House Journal*, 1894, p. 594.

¹² *House Journal*, 1894, p. 766.

¹³ *House Journal*, 1894, p. 861.

¹⁴ *House Journal*, 1894, pp. 1010, 1011.

¹⁵ *Senate Journal*, 1894, p. 72.

practice of law for the ten years last past; two of said commissioners shall be appointed by the House of Representatives, one by the State Senate and two by the Supreme Court, be and is hereby constituted for the purpose of revising and codifying the laws of Iowa, with annotations, and reporting necessary and desirable changes to the Twenty-sixth General Assembly.¹⁶

On March 7, 1894, Senator Jamison called for the consideration of the above bill and upon its being read, he moved that the Trewin bill from the House be substituted in its stead, which motion carried,¹⁷ as the Trewin bill had been already received in the Senate¹⁸ and passed upon favorably by the Judiciary Committee.¹⁹ On March 8, 1894, when the House bill was up for consideration, Senator F. R. Gorrell of Newton attempted to amend it by permitting one of the members of the Commission to be a person without legal education, but the amendment was lost,²⁰ and on its final reading the bill passed the Senate by the vote of 22 to 6.²¹

The act creating the Code Commission of 1897 is comparatively short but is very comprehensive and liberal in its provisions. The bill as finally enacted reads as follows:

SECTION 1. That a non-partisan commission consisting of five persons, two of whom shall be appointed by the house of representatives, one by the state senate and two by the supreme court, be and is hereby constituted for the purpose of revising and codifying the laws of Iowa and reporting necessary and desirable changes to the Twenty-sixth General Assembly. Each of said commissioners shall

¹⁶ *Senate Journal*, 1894, pp. 202, 203.

¹⁷ *Senate Journal*, 1894, p. 376.

¹⁸ *Senate Journal*, 1894, p. 238.

¹⁹ *Senate Journal*, 1894, p. 316.

²⁰ *Senate Journal*, 1894, p. 387.

²¹ *Senate Journal*, 1894, p. 388.

The Senate referred some of its bills for more mature deliberation to the Code Commission.— See *Senate Journal*, 1894, pp. 505, 728, and 813. On pages 860-862 may also be found a list of statutes amended.

be learned in the law and three of them shall have been engaged in the actual and continuous practice of the law for the ten years last past.

Sec. 2. The said commissioners to be appointed by the house and senate, shall be selected before the final adjournment of the Twenty-fifth General Assembly, and the others shall be selected before the first day of June, A. D. 1894.

Sec. 3. Before entering upon the discharge of their duties, the members of said commission shall severally take and subscribe to an oath to be filed with the secretary of state to support the constitution of the United States and of the state of Iowa, and to faithfully and impartially perform the duties required of them by this act according to the best of their knowledge and ability.

Sec. 4. Said commission shall carefully revise and codify the laws of Iowa, and shall rewrite the same and divide them into appropriate parts and arrange them under appropriate titles, chapters and sections; omit all parts repealed or obsolete, insert all amendments and make the laws complete. Said commission shall have power to transpose words and sentences, arrange the same into sections or paragraphs and number them, change the phraseology and make any and all alterations necessary to improve, systematize, harmonize and make the laws clear and intelligible. They shall omit from said revision all laws of a local or temporary character, those relating to the apportionment of the state into congressional, senatorial and representative districts, and all references to decisions, notes of their own report, or that of any former commission.

Sec. 5. Said commission shall enter upon the discharge of its duties on or before the first day of September, A. D. 1894, and its report showing what changes have been made, what statutes omitted and what amendments and further legislation it may deem necessary, shall be completed and printed before the first day of November, A. D. 1895. Each member-elect of the Twenty-sixth General Assembly shall be provided by the secretary of state with at least two copies of said report.

Sec. 6. Each member of said commission shall be allowed ten dollars (\$10.00) per day for each and every day of not less than six hours necessarily and actually employed in the discharge of the duties of said commission, together with all necessary traveling

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expenses, to be evidenced by vouchers duly verified and filed with the secretary of state.

Sec. 7. Said commission shall have the power to employ a clerk or stenographer at an expense of not more than five dollars per day and expenses when actually necessary in the discharge of the duties of the commission. The executive council shall audit all bills connected with the said commission, and when approved, the secretary of state shall draw orders on the auditor of state for the amounts shown. The auditor in turn shall issue orders on the state treasurer, who shall pay the same out of any funds not otherwise appropriated.

Sec. 8. Vacancies in said commission on account of death, removal from the state, refusal or inability of any member to act, or for any other cause, shall be filled by the supreme court.

Sec. 9. This act being deemed of immediate importance shall take effect and be enforced [in force] from and after its passage and publication in the Iowa State *Register* and Des Moines *Leader*, newspapers published in Des Moines, Iowa.

Approved March 19, 1894.²²

It will thus be seen that the powers of the Commissioners were very sweeping, for not only did they have the power to rewrite and rearrange, to transpose words and change the phraseology, but they also had the power to "make any and all alterations necessary to improve, systematize, harmonize and make the laws clear and intelligible." Under this last provision it appears that the Commission could propose new legislation when in its opinion such additional provisions would improve the law of the State.²³

Supplemental to the above act there was passed a joint resolution which still further enlarged the powers of the commission. During the closing days of the session a joint resolution was passed authorizing the Code Commission to appoint one or more persons,²⁴ not to exceed three in number who were to perform the following duties:

²² *Laws of Iowa*, 1894, pp. 111, 112.

²³ *Laws of Iowa*, 1894, pp. 111, 112, Sec. 4.

²⁴ *Senate Journal*, 1894, pp. 819, 820.

To act as commissioners for Iowa to confer with similar commissioners appointed by other states of the Union, in devising and recommending to the various states for adoption provisions to promote uniformity of legislation in the United States, and that said commission to revise and codify the laws of Iowa, is hereby directed to consider any recommendations which may be made by the commissioners of the various states for the promotion of such uniformity of legislation and incorporate such recommendations into their report to the next General Assembly so far as they may deem the same to be wise and expedient.²⁵

THE CODE COMMISSION

As noted above, the House of Representatives selected Mr. Charles Baker of Iowa City and Mr. John Y. Stone of Glenwood as its members of the Commission. The Senate appointed Mr. Emlin McClain of Iowa City, and the Supreme Court appointed Mr. H. S. Winslow of Newton and Mr. H. F. Dale of Des Moines.²⁶

Judge Horace Spencer Winslow, who was the chairman of the Commission,²⁷ was a Republican in politics and was born on the eighteenth day of July, 1837. His education was received at the academy at Brandon, Vermont, and at the

²⁵ *Laws of Iowa*, 1894, pp. 206, 207.

In the *Report of the Code Commission* may be found the following statement concerning the delegates to this association: "By joint resolution of the two houses of the General Assembly the Commission was authorized to send three delegates to represent the state at the meeting of commissioners appointed by the various states to consider and recommend to their states for adoption uniform laws on some subjects as to which uniformity of legislation is desirable. H. O. Weaver, L. G. Kinne, and Emlin McClain were appointed and each attended sessions of such commissioners and some of their recommendations are embodied in the reported code, with an explanation in each case of the source from which such provisions come. This work is still in progress with a prospect of very beneficial results. It is recommended that that commission, consisting of the same or other members, be continued, and that an appropriation be made to pay their expenses and provide a fund to be used in paying the proper share of the necessary printing. Thus far the members have paid their own expenses."—*Report of the Code Commission*, pp. 6, 7.

²⁶ *Code of 1897*, Preface, p. iv.

²⁷ *Report of the Code Commission*, 1896, title page.

State National Law School at Poughkeepsie, New York. In addition, he attended the Ohio State and Union College at Portland, Ohio, and graduated therefrom on the first day of July, 1856. Shortly afterwards, Mr. Winslow located at Newton and began the practice of the law. In 1862 he was elected as District Attorney for the Sixth Judicial District, which position he filled until 1866. From 1869 until 1870 he served as a judge on the Circuit Court and from 1875 until 1878 as a judge of the District Court.²⁸ He died on December 11, 1899.²⁹

The Secretary of the Commission was Mr. Charles Baker of Iowa City, who was born at Saratoga, New York, on January 18, 1843. At an early age he removed to Wisconsin and served from 1861 until the close of the Civil War in Company "I" of the Fourth Wisconsin Volunteer Infantry. After the close of the war he removed to Iowa City, where he studied law and later located. Mr. Baker died at Iowa City on July 1, 1910.³⁰

John Y. Stone of Glenwood, one of the House appointees to the Commission, was also born in 1843, on the twenty-third day of April, near Springfield, Illinois.³¹ In 1856 he removed to Iowa and later, during the war, enlisted in the Fifteenth Iowa Volunteer Infantry. He served in the House of Representatives during the Twelfth, Thirteenth, Sixteenth, and Seventeenth General Assemblies, acting as speaker in the year 1878; and in the Senate during the Fourteenth and Fifteenth General Assemblies. From 1889

²⁸ *Iowa Official Register*, 1911-12, pp. 144, 145.

²⁹ Brief biographical sketches of Judge Horace S. Winslow may be found in the *Annals of Iowa*, 3rd Series, Vol. IV, p. 320; *Proceedings of the Iowa State Bar Association*, 1900, pp. 99-104; and *The Bench and Bar of Iowa*, 1901, pp. 384-389.

³⁰ Very little of a biographical nature is to be found concerning Mr. Baker. A short sketch of his life may be found in *Proceedings of the Iowa State Bar Association*, 1911, pp. 22, 23.

³¹ Gue's *History of Iowa*, Vol. IV, p. 252.

until 1895 Mr. Stone was the Attorney General of Iowa. He is a Republican in politics.

Horatio F. Dale, who was appointed to the commission by the Supreme Court, was born and educated in England. Removing to this country about 1870 he located at Dubuque and studied law until 1874, when he removed to Cornish. In 1892 Mr. Dale removed to Des Moines.³³

The most distinguished member of the Commission, however, was Mr. Justice Emlin McClain of Iowa City, who was appointed by the Senate. Judge McClain was born at Salem, Ohio, on November 26, 1851. In 1855 his parents removed to Tipton, Iowa, where he received his preliminary education. After spending some time at the Wilton Academy he entered the State University of Iowa and graduated from the Law Department in 1873.³⁴ Later in the same year Judge McClain began the practice of law in Des Moines. *McClain's Code* of 1880 was prepared while he was thus engaged in practice. In 1881 he became a professor of law in the Law College at Iowa City and six years later he was made Vice-Chancellor. Three years thereafter he became Chancellor and for over ten years he held this responsible position. In 1901 he was elected to the Supreme Court of Iowa and filled this high post with eminent success for two terms.³⁵ In addition to the positions enumerated Judge McClain has membership in the American Bar Association and has efficiently served the State on various occasions.³⁶

³² *Iowa Official Register*, 1911-12, pp. 112, 125, 146.

³³ *The Courts and Legal Profession of Iowa*, Vol. I, p. 396. Little seems to be in print concerning the career of Mr. Dale.

³⁴ *The Iowa Alumnus, Alumni Register Number*, 1911, p. 136.

³⁵ *Iowa Official Register*, 1911-12, p. 140.

³⁶ Among these labors have been the annotation of the *Code of 1897* and the supplements thereto, and acting as one of the Iowa Commissioners on uniform legislation in 1894.

His writings on jurisprudence are very voluminous and are widely known.³⁷

The above Commissioners individually, at first, went over the entire *Code of 1873* and all the general statutes from 1873 to 1894 and then met in general session, "incorporating all amendments which have been made, omitting all provisions which have been repealed or are obsolete, and in general making the expression of the law correspond to its present legal effect."³⁸ The results of their labor was comprised in two volumes: one, a *Proposed Code*; and the other, the *Report of the Code Commission*, which explained the *Proposed Code*.³⁹

REPORT OF THE CODE COMMISSION

The *Report of the Code Commission* is a small book of one hundred sixty-three pages which accompanies the *Proposed Code*. The general report, which occupies the first even pages of this book, gives an account of the labors of the Commission.⁴⁰ Although empowered to propose new legislation the Commission exercised this power sparingly and in commenting thereon it remarked that "in the exercise of the duty of rewriting the law and improving its phraseology, the Commission has made many verbal changes, but has done so with great care in order that the meaning of the statutes should not be thereby materially changed. . . . It has therefore recommended some changes, having in view, however, the unification and per-

³⁷ For sketches on the life of Chief Justice Emlin McClain see *The Courts and Legal Profession in Iowa*, Vol. I, pp. 397-399; *The Bench and Bar of Iowa*, 1901, pp. 269-271; Gue's *History of Iowa*, Vol. IV, pp. 173, 174; and *Who's Who in America*, 1912-1913, p. 1319. A bibliography of his writings and also a short sketch of his career may be found in *The Hawkeye*, Class of 1913, State University of Iowa, 1912, Vol. XXII, pp. 361, 362.

³⁸ *Report of the Code Commission*, 1896, p. 1.

³⁹ *Code of 1897*, Preface, p. iv.

⁴⁰ The *Report of the Code Commission* is also contained in the *Iowa Documents*, 1896, Vol. III.

fection of the system of the written law as it now is, rather than the enlargement of it or its change in material matters."⁴¹

The Commission further explained that it had adopted a complete code, which it had had printed in the form of separate bills, ready for enactment, and that these had been bound together to form the *Proposed Code*. It also stated the manner in which new or rewritten portions were underscored so as to enable anyone to distinguish the new from the existing law. Under the authority of law the Commission omitted much that was superfluous and made many transpositions of words and phrases. In some instances these changes were so numerous that the entire chapter was underscored.⁴²

The two bills referred by the Senate to the Commission for its consideration — one concerning the revenue and taxation laws, and the other providing for the adoption of the Torrens system of land titles — were discussed. Quite an extensive report was made on the revenue bill,⁴³ but it was not thought advisable to incorporate the Torrens system into the *Proposed Code*.⁴⁴ At the end of this general report there is a recommendation relative to the manner of considering the *Proposed Code*, which is of interest in view of the many ideas which were later expressed in the General Assembly as to how the Code should be considered. The Commission suggested that:

With the view of facilitating the action upon this report by the General Assembly, it is respectfully suggested that without referring the different portions to the several committees of each body, a joint committee be appointed by the two Houses to consider and report as a whole, propose such changes as they may find

⁴¹ *Report of the Code Commission*, 1896, pp. 1, 2.

⁴² *Report of the Code Commission*, 1896, pp. 3, 4.

⁴³ *Report of the Code Commission*, 1896, pp. 45-53.

⁴⁴ *Report of the Code Commission*, 1896, p. 6.

their judgment necessary, and take charge of the passage of the successive titles in the form of bills, and that from the beginning of this session the General Assembly set apart four days of each week for the consideration of the various titles as they may be reported to them by this joint committee, until the adoption of the entire code is completed. It is suggested that this is the only method by which the work can be accomplished at the regular session and that it can be successfully accomplished in this way without materially interfering with the general legislation, or greatly prolonging the session. Any general legislation which may be found necessary during the session can be passed in the form of separate bills and incorporated by the editor in the proper places in the code before the final numbering of the chapters and sections.⁴⁵

Beginning with page ten there is an "Accompanying Report" in explanation of the reported code. Wherever there is any change of a material nature the change is explained and defects in the existing law are commented upon. There are in some instances new or substitute acts proposed in place of or supplemental to those in the *Proposed Code*.⁴⁶ Title five, which concerned city and town government, was considerably changed, the Commission declaring:

The chapter of the Code on cities and towns has been expanded by subsequent legislation into many times the bulk of the original statutory law on the subject, and has, therefore, been made a separate title and divided into chapters. The plan of the Code chapter was proven entirely too narrow for the subsequent legislation, and as a result the whole law of the subject has been thrown by subsequent enactments into inextricable confusion. The Commission has, therefore, felt justified in taking radical measures for the purpose of securing some intelligible system, not only for the present revision, but to serve as a basis for future legislation on the subject.⁴⁷

Section six of chapter two of this title provided that all municipal elections should occur on the first Monday in

⁴⁵ *Report of the Code Commission, 1896, p. 7.*

⁴⁶ *Report of the Code Commission, 1896, p. 23.* Another example may be found on p. 35.

⁴⁷ *Report of the Code Commission, 1896, p. 26.*

April which change was made for the purpose of securing uniformity.⁴⁸ The law relating to sewer and street improvement was declared to be in the greatest confusion. An attempt was made to reduce the bulk of legislation upon these subjects, but from the table of legislative acts which is incorporated in the report, the difficulty of such a task is readily apparent.⁴⁹

The title on revenue receives a great deal of attention in the report, the Senate revenue bill of the Twenty-fourth General Assembly having been referred to the Code Commission, as was also the report of the Revenue Commission of 1892. The latter commission, among other provisions had recommended an elaborate inheritance tax law, but the Code Commission did not deem it wise to adopt this recommendation.⁵⁰

One of the sections which was recommended for adoption was Section 4294 of the *Revision of 1860* which seems to have been omitted from the *Code of 1873* through inadvertence. This section provided that if any person break from the penitentiary he should be imprisoned for five years more after the termination of his original sentence.⁵¹ Another new section which was based upon the statutes in force in Illinois and New York was aimed at "book-makers" and other gambling institutions.⁵² One section in the chapter on "Pardons and the Remission of Fines and Forfeitures" provided that the Governor might commute a death sentence to imprisonment in the penitentiary for life.⁵³

In an appendix may be found tables showing where the

⁴⁸ *Report of the Code Commission*, 1896, p. 29.

⁴⁹ *Report of the Code Commission*, 1896, pp. 33-35.

⁵⁰ *Report of the Code Commission*, 1896, p. 50.

⁵¹ *Report of the Code Commission*, 1896, p. 126.

⁵² *Report of the Code Commission*, 1896, section 34, p. 126.

⁵³ *Report of the Code Commission*, 1896, p. 135.

various sections of *McClain's Code* may be found in the *Proposed Code*, both by page and section. Similar tables show where the various chapters of the laws of the Twenty-third to Twenty-fifth General Assemblies may be found in this portion of the book.⁵⁴

THE PROPOSED CODE

The most important work of the Code Commission was the body of proposed bills which were to form the foundation for the *Code of 1897*. These were bound in a large quarto volume of 1031 pages, which was known as the "Black Code" from the color of the binding.⁵⁵

Each title is printed in the form of a separate bill, thus following the method adopted in the preparation of the *Code of 1873*. Within each title the chapters are numbered consecutively as are also sections within each chapter. Whenever a section is new or is substantially rewritten it is underscored. One can thus tell at a glance whether the portion is existing law or the work of the Commissioners. At the end of a majority of the sections are numbers enclosed in brackets, which refer to *McClain's Annotated Code of 1888*. Citations were made to this work since it contained most of the legislation of the period and was easy to obtain for reference purposes.⁵⁶

To enumerate all the changes outlined in the *Proposed Code* would make a very voluminous article and would serve no useful purpose. Only a few of the more important changes will therefore be noted. The chapter relating to

⁵⁴ *Report of the Code Commission*, 1896, pp. 139-163.

⁵⁵ The pages of this volume were the same size as the files on which the legislative bills are printed, about $12\frac{3}{4} \times 9\frac{1}{2}$ inches. The binder's title is "Proposed Revision of the Code of Iowa.—1896". The title "Black Code" is the popular title and it is so called in the *Check List of the Publications of the State of Iowa*, p. 34. The title *Proposed Code* has been used by the writer to avoid confusion.

⁵⁶ *Proposed Code*, 1896, Explanatory Note.

the census is one that was totally rewritten.⁵⁷ The chapter concerning the Clerk of the Supreme Court⁵⁸ was very largely recast, as is also Title V, relating to city and town government.⁵⁹ The larger part of Title XII, dealing with the police of the State, was remoulded and rewritten.⁶⁰ The election law contains provisions for the Australian ballot and a form of blank ballot.⁶¹

The greatest number of changes occurred in part one, which covers nearly six hundred pages of the report. The majority of the changes in part two, which contains private law, appear to be of a minor nature. In parts three and four there are comparatively few changes. The indeterminate sentence law is to be found in the latter part of part four and is one of the important parts of the Criminal Code.⁶² At the close of the volume is to be found a table of corrections and a table of contents.

LEGISLATIVE ACTION UPON THE REPORT

The Twenty-sixth General Assembly began its session on January 13, 1896.⁶³ Three days later Governor F. M. Drake delivered his inaugural address. In it he declared:

The last general assembly created a commission of five men, learned in the law, to revise and recodify the statutes of the state. This commission has completed its work, and its report will come before you for consideration. It is of vast importance, affecting as it does every interest in the state. This being the case, I need not urge upon you to give it a thorough examination and careful consideration.

Allow me to suggest that the laws pertaining to contracts should

⁵⁷ *Proposed Code*, 1896, pp. 37, 38.

⁵⁸ *Proposed Code*, 1896, pp. 46, 47.

⁵⁹ *Proposed Code*, 1896, pp. 125-194.

⁶⁰ *Proposed Code*, 1896, pp. 437-530.

⁶¹ *Proposed Code*, 1896, pp. 203-224.

⁶² *Proposed Code*, 1896, pp. 1016, 1017.

⁶³ *Iowa Official Register*, 1911-12, p. 125.

be made, so far as possible, to avoid technicalities, and so simplified as to be within the comprehension of ordinary minds. If this can be done, much in the way of litigation will be avoided, the work of courts and juries lessened, and the burdens of taxation lightened.⁶⁴

On the day before the above address was delivered, however, Mr. James H. Funk of Iowa Falls offered the following resolution, which was adopted:

Resolved, That a committee of seven (7) be appointed by the Speaker to recommend a plan for the consideration of the report of the Code Commission, and that the committee report as soon as possible.⁶⁵

The Speaker accordingly appointed Mr. James H. Funk of Iowa Falls, Mr. M. L. Temple of Osceola, Mr. H. K. Evans of Corydon, Mr. Charles L. Early of Sac City, Mr. W. W. Cornwall of Spencer, Mr. Claude R. Porter of Centerville, and Mr. Harry O. Weaver of Wapello.⁶⁶

The members of this committee were not of the same mind as to how the code report should be considered and a majority and a minority report were submitted. A partial report, submitted in behalf of the majority by Mr. M. L. Temple, and signed by all except Mr. Charles L. Early, provided that a committee of twenty-five members, to be known as the Code Revision Committee, should be appointed. The duties of such standing committee were to "subdivide said report and assign different parts and titles thereof to the proper standing committees of the House, and shall duly report such assignments to the House, which body shall retain the power to refer to the regular standing committees, or the Code Revision Committee, any bills introduced or any parts of the report of the Code Commission."⁶⁷

⁶⁴ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, p. 114.

⁶⁵ *House Journal*, 1896, p. 23.

⁶⁶ *House Journal*, 1896, p. 26.

⁶⁷ *House Journal*, 1896, p. 30.

Mr. Chas. L. Early presented a minority report which provided for the appointment of a joint commission of three members from each house who should divide the *Proposed Code* as nearly as possible into five sections of equal importance and report their action to the two houses. Thereupon, the presiding officer of each house would appoint five special committees of five members each, which would be known as the first, second, third, fourth, and fifth divisions of the Code Revision Committee. Before a final recommendation the five committees were to form a "Committee of the Whole and concurrently report to the two Houses".⁶⁸

On the following day the committee again submitted majority and minority reports which were very similar to the two reports just described.⁶⁹ Mr. James H. Funk, however, had joined with Mr. Early in recommending the adoption of the minority report.⁷⁰

On the 18th of January, 1896, there was submitted in the House a resolution which was a modification of the plan proposed by Mr. Charles L. Early a few days previously.⁷¹ After several substitutes had been offered and voted down the resolution was adopted.⁷² The Speaker of the House accordingly appointed W. S. Allen, J. H. Funk, W. W. Cornwall, M. L. Temple, and H. H. Brighton a committee of five to divide and assign the parts of the report of the Code Commission.⁷³ These gentlemen, on the day after their appointment to the Committee on the Distribution of the Code, introduced House Files Nos. 2 to 27, inclusive, which

⁶⁸ *House Journal*, 1896, pp. 30, 31.

⁶⁹ *House Journal*, 1896, pp. 35, 36.

⁷⁰ The House ordered 500 copies of the minority report to be printed.—*House Journal*, 1896, p. 37.

⁷¹ *House Journal*, 1896, pp. 38, 39.

⁷² *House Journal*, 1896, pp. 39-42.

⁷³ *House Journal*, 1896, p. 46.

were the twenty-six bills prepared by the Code Commission, each bill containing a title.⁷⁴ Later in the same day they made the following assignment which was approved:

First division, House Files Nos. 2, 3, 4, 10, 17, 18, and 27; second division, House Files Nos. 5, 11, 12, and 19; third division, House Files Nos. 6, 13, 20, 21, and 22; fourth division, House Files Nos. 7, 14, 23, 24, and 25; fifth division, House Files Nos. 8, 9, 15, 16, and 26.⁷⁵

On the following day the Speaker announced the standing committees of the House and the various divisions of the Committee on the Revision of the Code.⁷⁶

⁷⁴ *House Journal*, 1896, pp. 54-57.

⁷⁵ *House Journal*, 1896, p. 59. This report was printed for the use of the members.

⁷⁶ *House Journal*, 1896, pp. 70-79.

The Judiciary Committee consisted of the following representatives: W. W. Cornwall of Spencer, W. S. Allen of Birmingham, C. C. Dowell of Des Moines, Harry O. Weaver of Wapello, Parley Finch of Humboldt, M. L. Temple of Osceola, H. H. Brighton of Fairfield, H. K. Evans of Corydon, C. F. Johnston of Sheffield, J. F. Lavender of Rockwell City, William C. McArthur of Burlington, Francis McNulty of Sioux City, S. Mayne of Bancroft, J. T. P. Power of Keokuk, N. A. Merrell of De Witt, O. A. Byington of Iowa City, and Claude R. Porter of Centerville.

The committees on the revision of the Code were as follows:

First Division — M. L. Temple of Osceola, H. J. Griswold of Winthrop, J. F. Reed of Nevada, H. H. Brighton of Fairfield, J. W. Lauder of Afton, H. J. Nietert of Walker, and N. A. Merrell of De Witt.

Second Division — W. S. Allen of Birmingham, W. W. Cornwall of Spencer, William C. McArthur of Burlington, R. T. St. John of Riceville, M. K. Whelan of Estherville, G. N. Haugen of Northwood, and F. B. Manahan of Le Mars.

Third Division — Parley Finch of Humboldt, John Morrison of Hedrick, Z. H. Gurley of Lamoni, H. K. Evans of Corydon, Francis McNulty of Sioux City, A. L. Wood of St. Charles, and O. O. Tibbitts of Sumner.

Fourth Division — M. H. Brinton of Ellsworth, C. F. Johnston of Sheffield, C. C. Dowell of Des Moines, James H. Funk of Iowa Falls, W. G. Ray of Grinnell, J. D. Morrison of Reinbeck, and Claude R. Porter of Centerville.

Fifth Division — Harry O. Weaver of Wapello, S. Mayne of Bancroft, Charles L. Early of Sac City, William B. Bell of Washington, J. F. Lavender of Rockwell City, W. B. Martin of Greenfield, and L. F. Potter of Oakland.

Mr. E. M. Allen acted as clerk to the second division, Mr. O. V. Miracle to the fourth division, and Mr. J. M. McLaughlin to the fifth division.

Early in the session a concurrent resolution was received from the Senate providing that any code of laws or any revision prepared under authority of the General Assembly should "be properly and carefully annotated, and show in connection with each section the decisions of the Supreme Court relative thereto."⁷⁷ This was referred to the Code Commission for further action.⁷⁸ Nothing, however, seems to have been done by this Commission in that respect.

On January 29, 1896, a concurrent resolution calling on the Secretary of State to distribute three copies of the report of the Code Commission, along with three copies of the *Proposed Code*, to each member of the General Assembly was adopted in the House.⁷⁹ On the same day Mr. W. W. Cornwall offered a resolution which was adopted and which required each division of the Committee on Revision to report the number of their titles with the various chapters and the page of each in the *Proposed Code*.⁸⁰ The various sub-divisions reported as ordered⁸¹ and from time to time submitted reports on the bills assigned to them.⁸²

By the middle of February the House evidently began to realize the hugeness of the task before it, and Mr. O. E. Doubleday of Elkhart offered the following resolution:

Whereas, There is a difference of opinion as to the best method of acting on or adopting any part of the commissioner's Code; and

⁷⁷ *House Journal*, 1896, p. 67.

⁷⁸ *House Journal*, 1896, p. 86.

Mr. Parley Finch early in the session had offered the following resolution concerning the consideration of bills, which had been adopted: "That all bills introduced in the House to repeal, amend, or in any manner affect existing statutes shall, on the margin or at the foot of said bill, refer to the page of the proposed code where said law to be so repealed or amended can be found". — *House Journal*, 1896, p. 48.

⁷⁹ *House Journal*, 1896, pp. 95, 97.

⁸⁰ *House Journal*, 1896, p. 97.

⁸¹ *House Journal*, 1896, pp. 102, 103, 122, 123, 141-143, 146, 147, and 158-160.

⁸² *House Journal*, 1896, pp. 357, 386.

Whereas, I believe the members of the General Assembly honestly want to get through with the business coming before them as rapidly as possible; therefore, be it

Resolved, by the House, the Senate concurring; That whenever any standing committee approve any chapter or title, and have incorporated in said chapter or title all acts approved by the Twenty-sixth General Assembly referring to such chapter or title, the chapter or title of the commissioners' Code so approved, on being referred to either House of the General Assembly shall be considered and acted on in its order, and when approved by both Houses and signed by the Governor shall be considered as a part of the New Code.⁸³

This resolution, however, does not appear to have been adopted. Nearly a month later another resolution was proposed which provided that "after March 27 no business be considered by this assembly except that pertaining to the Code, and that final adjournment be fixed for Wednesday, April 15."⁸⁴ This proposal was also "laid over under Rule No. 34". On March 14th, Mr. Doubleday again attempted to hurry the work on the Code by offering a resolution calling on the House of Representatives to hold a two-hour session every afternoon "for the consideration and passing of the titles of the Code on which the proper committees have acted and reported passage."⁸⁵

On the 25th of March, however, a direct attempt was made to postpone action on the Code in a resolution offered by Mr. S. N. Hinman of Belmond, which reads: "*Resolved,* That all further consideration of the report of the Code Committee be postponed until the completion of the regular work of this session."⁸⁶ On the following day the House voted on the question of an adjourned session, but Judge O. A. Byington of Iowa City offered a substitute resolution

⁸³ *House Journal*, 1896, p. 383.

⁸⁴ *House Journal*, 1896, p. 745.

⁸⁵ *House Journal*, 1896, p. 767.

⁸⁶ *House Journal*, 1896, p. 879.

which declared that the Twenty-sixth General Assembly would complete and adopt the Code before adjournment. This resolution carried by a vote of 55 to 39.⁸⁷ Several members filed written explanations of their vote, among them being W. S. Allen, who declared that he voted against the substitute because he thought it nothing but a dilatory measure which would place the members in a false light.⁸⁸

Immediately after the adoption of this resolution two others were introduced calling for information as to the progress of the work of revision, but they were both laid on the table.⁸⁹ On the 27th Mr. H. B. Watters moved to reconsider the vote on the Byington resolution and this was seconded by Mr. J. J. Lowry.⁹⁰ On the same day Mr. F. F. Merriam of Delaware County proposed that after March 31st the House should consider "only appropriation bills, bills granting claims against the state reported favorably by the Committee on Claims, and the proposed Code, and that no other bills be considered unless taken up by consent of the entire House."⁹¹

On March 27th, during the discussion relative to adjournment, two bills had been introduced in the House for the purpose of paying the Code Commission and the clerk of the Commission.⁹² After having been considered by the Committee on Appropriations they were recommended for indefinite postponement.⁹³

On April 3rd the question of adjournment was again raised in the House by a resolution received from the Senate fixing April 11, 1896, as the time when the two houses should

⁸⁷ *House Journal*, 1896, pp. 889, 890.

⁸⁸ *House Journal*, 1896, p. 891.

⁸⁹ *House Journal*, 1896, p. 891.

⁹⁰ *House Journal*, 1896, p. 896. A similar motion is to be found on p. 909.

⁹¹ *House Journal*, 1896, pp. 901, 902.

⁹² *House Journal*, 1896, p. 900.

⁹³ *House Journal*, 1896, p. 968.

adjourn *sine die*. This resolution was adopted by a majority of twenty votes, several voting "aye" in order that they might move for a reconsideration.⁹⁴ Later, however, the following concurrent resolution was received from the senate and passed on April 11, 1896:⁹⁵

WHEREAS, The people of the State of Iowa have deemed it advisable to codify and revise the statutes of the State, and the Twenty-fifth General Assembly in obedience to the will of the people as interpreted by them, appointed a commission to do said work and make report thereof to the Twenty-sixth General Assembly for their action; and

WHEREAS, Said commission after two years labor reported to the Twenty-sixth General Assembly a proposed Code of over one thousand pages, containing a revision and codification of the statutes of the State, and this Assembly has entered into an examination and discussion thereof, and has now been in session the customary period and has not been able to pass upon more than one-half of said report up to the present time for the reasons:

First.— That the Assembly has been compelled to consider matters of original legislation presented in 950 bills in addition to the aforesaid Code work.

Second.— For the reason that the revision requires an examination of the Code of 1873 and the acts of eleven General Assemblies, the Fifteenth to Twenty-fifth inclusive, and the work of examining and comparing the proposed Code with existing statutes is slow and laborious.

Third.— For the reason that the commission embodied in the reported Code numerous changes from existing law, which changes have compelled the Assembly to consume time in their examination and discussion; and

WHEREAS, Doubts have arisen as to the accuracy of the revision of certain chapters and titles, and it is deemed unwise to pass the same until ample time can be given the people of the State to examine and compare the proposed Code with existing law; and,

WHEREAS, The proposed Code was not published until December, 1895, and little opportunity was given for such examination and

⁹⁴ *House Journal*, 1896, pp. 1003, 1004.

⁹⁵ *House Journal*, 1896, p. 1197.

comparison by any one prior to the convening of this General Assembly; and,

WHEREAS, The future value of the revision depends upon the care exercised in the work, and its importance demands ample time for thorough consideration, and the exclusion of original legislation is necessary while the proposed revision is under discussion; therefore be it

Resolved by the Senate, the House concurring, That we deem it impossible, under existing circumstances, to complete the work of Code revision at this or any other regular session, or any reasonable extension of the present session, in a manner that would be satisfactory and acceptable and just to the people of the State.

That the propriety and expediency of Code revision cannot now be questioned, and the work, if thoroughly done, will be of lasting value to the State.

That we deem it advisable to secure the benefit of the knowledge and experience acquired by this Assembly in the work of the Code revision, and the benefit of the work done by them, and believe it to be for the welfare of the State and in the interest of economy that the work be completed at as early a date as practicable, and not later than January, 1897.⁹⁶

Near the close of the session a resolution was spread on the minutes declaring that in the case of an extra or adjourned session, the House would retain its present clerical force.⁹⁷ The House adjourned *sine die* on April 11, 1896,⁹⁸ though a great many petitions had been received opposing such action.⁹⁹

In the Senate there does not appear to have been as much uncertainty as to the method of procedure in regard to the consideration of the report of the Commissioners as in the House. On the first day of the session Senator William B. Perrin of Nashua offered the following resolution: "*Resolved,* That there be a committee of the Senate to be known

⁹⁶ *House Journal*, 1896, pp. 1180, 1181.

⁹⁷ *House Journal*, 1896, p. 1212.

⁹⁸ *House Journal*, 1896, p. 1225.

⁹⁹ *Senate Journal*, 1896, pp. 531, 543, 551, 565, 566, 574, 575, 602, 615.

s the Code Revision Committee, appointed by the President of the Senate."¹⁰⁰ As there were objections to this resolution at the time it was laid over until the following day and again introduced.¹⁰¹ Senator L. A. Ellis of Clinton wanted to amend the resolution by having the presiding officer of the Senate appoint fifteen members and the speaker of the House twenty-five members, who should constitute a Code Revision Committee. This committee should assign the various parts of the report to the standing committees, but the houses were to retain the power to refer any bills as they deemed fit.¹⁰²

For this amendment Senator W. H. Berry of Indianola proposed the following substitute:

Resolved, That a committee of fifteen be appointed by the chair, to be known as the Code Committee, whose duty shall be:

First.— To recommend to the Senate the assignment of the different parts of the Code of Iowa as reported to the General Assembly by the Code Commission to the several standing committees, except titles 17 and 18.

Second.— To have charge of titles 17 and 18 of the code as reported by the Code Commission, and to which shall be referred all matters introduced, which shall relate to the subjects of said titles 17 and 18.

Third.— Such other matters as may be referred to it by the Senate.¹⁰³

Senator Thomas A. Cheshire of Des Moines desired that all these resolutions be laid over and that they be also printed. Senator James H. Trewin, however, offered an amendment to the Cheshire motion which provided that the

¹⁰⁰ *Senate Journal*, 1896, p. 10.

¹⁰¹ *Senate Journal*, 1896, p. 16.

¹⁰² *Senate Journal*, 1896, p. 16. Senator Trewin, who is now a resident of Cedar Rapids, was one of the leading advocates of codification. On the second day of the session he introduced a resolution to distribute three copies of the *Proposed Code* and the accompanying report to each member of the General Assembly.— *Senate Journal*, 1896, p. 14.

¹⁰³ *Senate Journal*, 1896, p. 16.

question "be referred to a committee of seven, to report to the Senate to-morrow a plan for the consideration of the report of the Code Commission."¹⁰⁴ This amendment was received with favor and the President appointed James H. Trewin, L. A. Ellis, W. H. Berry, N. M. Pusey, T. G. Harper, L. C. Blanchard, and Joseph M. Junkin on such committee.¹⁰⁵

When the Committee reported on the following day it proposed the following resolution:

Be it resolved by the Senate, That there is hereby created a standing committee of fifteen (15) members to continue during the Twenty-sixth General Assembly, and to be known as the Code Revision Committee, and to which shall be referred the report of the Code Commission.

Said committee shall sub-divide said report and assign different parts and titles thereof to the proper standing committees of the Senate, and shall duly report such assignments to the Senate, which body shall retain the power to refer to the regular standing committees or the Code Revision Committee any bills introduced, or any parts of the report of the Code Commission. Said Code Revision Committee may confer with any like committee of the House, and may concur in reports to the respective bodies.¹⁰⁶

This resolution, upon the motion of Mr. B. F. Carroll, was adopted. On the following day, therefore, Lieutenant Governor Matt Parrott appointed the Senate standing committees and the following gentlemen were placed on the Committee for the Revision of the Code:¹⁰⁷ C. A. Carpenter of Columbus Junction, Chairman, James H. Trewin of

¹⁰⁴ *Senate Journal*, 1896, pp. 16, 17.

¹⁰⁵ *Senate Journal*, 1896, p. 17.

¹⁰⁶ *Senate Journal*, 1896, p. 23.

¹⁰⁷ In his first address to the Senate Lieutenant Governor Matt Parrott said: "In addition to the ordinary legislation of a session, you are called upon to consider the report of the commission provided by the Twenty-fifth General Assembly to revise the Code of Iowa. The completed report is before you, and throws additional as well as very grave responsibilities on you. The preparation and final completion of the work involves a large expenditure to the State,

Lansing, N. M. Pusey of Council Bluffs, George M. Craig of Allison, J. L. Carney of Marshalltown, W. H. Berry of Indianola, J. S. Lothrop of Sioux City, Joseph M. Junkin of Red Oak, Alva C. Hobart of Cherokee, A. B. Funk of Spirit Lake, G. S. Gilbertson of Forest City, H. L. Waterman of Ottumwa, John E. Rowen of Clarion, Cyrus S. Ranck of Iowa City, and T. G. Harper of Burlington.¹⁰⁸

The committee thus appointed was one of unusual ability and its membership contained some of the leading lawyers and practitioners in the State.

On the 20th of January the Code Revision Committee made a report in which the various titles were assigned to the Senate standing committees, and at the same time it introduced Senate Files Nos. 45 to 64 inclusive, which were bills "to revise, amend and codify the laws in relation to" the various titles embraced in the *Proposed Code*.¹⁰⁹

and the value of your labors the future will have to determine. If the passing years demonstrate that you have acted wisely and well the reward will be yours. Stability in our laws is the desideratum to be desired. Haste in the consideration of this report, therefore, should not dominate, but thoroughness rather, and I believe this will be your collective view."—*Senate Journal*, 1896, p. 30.

¹⁰⁸ *Senate Journal*, 1896, p. 35.

The Judiciary Committee, which always plays an important part in the making of laws, consisted of Lyman A. Ellis of Clinton, Thomas A. Cheshire of Des Moines, William Eaton of Sidney, C. A. Carpenter of Columbus Junction, William B. Perrin of Nashua, Julian Phelps of Atlantic, C. C. Upton of Cresco, W. F. Harriman of Hampton, L. C. Blanchard of Oskaloosa, W. O. Mitchell of Corning, F. O. Ellison of Anamosa, Thomas D. Healy of Fort Dodge, T. G. Harper of Burlington, Cyrus S. Ranck of Iowa City, and Robert Bonson of Dubuque.

¹⁰⁹ *Senate Journal*, 1896, pp. 56-59.

The Committee on Code Revision also introduced code bills as follows: Senate Files Nos. 80 to 104, 388 to 390, 420 to 422.—*Senate Journal*, 1896, pp. 74-76, 492, 493, 615. The Committee on Schools introduced code bills in Senate Files Nos. 433 to 438.—*Senate Journal*, 1896, pp. 694, 695. Reports of the Committee on Code Revision on bills assigned to it may be found in the *Senate Journal*, 1896, pp. 126, 184, 362, 406, 476, 496, 497, 541, 582, 584, 594, 595, 617, and 618. The large number of amendments to the *Code of 1873* are listed on pages 970-973.

Early in the session a resolution offered by Senator J. L. Carney of Marshalltown raised the question of annotation. On the 22nd of January he proposed a concurrent resolution providing that any code or revision prepared under the direction of the General Assembly should be annotated.¹¹⁰ This resolution was adopted in the Senate, but no action appears to have been taken on it in the House.¹¹¹

On February 4, 1896, Senator Blanchard, a member of the Judiciary Committee, presented a concurrent resolution which shows that at this early date in the session there were members who did not deem it possible or advisable to complete the Code at the regular session. Though Senator Blanchard's resolution was never adopted by the legislature it is here given in full:

WHEREAS, The Twenty-fifth General Assembly created a Code Commission "to revise and codify the laws of Iowa," empowering such commission "to revise the same and divide them into appropriate parts and arrange them under appropriate titles, chapters and sections; omit all parts repealed or obsolete, insert all amendments, and make the laws complete"; also "to change the phraseology and make any and all alterations necessary to improve, systematize, harmonize and make the laws clear and intelligible;" and

WHEREAS, Such Commission has construed the language of such act to authorize them to make any alterations and changes in the existing laws which they deemed proper or desirable, and have prepared a proposed Code, which is not merely a codification of existing laws, but which omits a large portion of the existing laws and substitutes other proposed laws of different import, and have made innumerable alterations not only in the language, but in the spirit, purport and effect of the various statutes, the new matter being intermingled with the old in such a manner that it will require a vast amount of labor and much more time to properly consider it in detail so that intelligent actions can be had thereon than will be at the disposal of this General Assembly; and

WHEREAS, It is now apparent that it will be impossible for this

¹¹⁰ *Senate Journal*, 1896, p. 73.

¹¹¹ See above, notes 77 and 78.

General Assembly to adopt a new Code, and that should the General Assembly go through the Code in detail, so many alterations will have been made including new legislation, that a new Code Commission will be required to complete the work; therefore,

Resolved, By the Senate, The House concurring, That no further consideration be given to the proposed Code during the present session, and at the close of the session a new commission of one or more members be appointed (by a properly prepared bill) to codify the existing laws without change or alteration, except to omit such laws as have been repealed, and arrange all existing public laws under proper titles, chapters and sections, thus compiling a Code of laws which will require no further action on the part of the General Assembly.¹¹²

A resolution providing that no bills be introduced after February 20, 1896, was referred to the Code Revision Committee, and they recommended a substitute which called for the introduction after that date of only legalizing acts and appropriation bills, but this also failed of passage.¹¹³

On April 9, 1896, Senator C. A. Carpenter introduced a concurrent resolution which has been quoted above in connection with the consideration of the report of the Code Commission in the House. The resolution stated that the General Assembly would be unable to complete the revision at the regular session, but that it should be adopted not later than January, 1897.¹¹⁴ On the following day the resolution was adopted by the vote of 33 to 12.¹¹⁵ One Senator, Mr. J. L. Carney, voted against the measure for the reason that he thought it was inviting the calling of an extra session.¹¹⁶ The House concurred in the action of the Senate and the consideration of the Code was thereupon dropped.¹¹⁷ In

¹¹² *Senate Journal*, 1896, p. 125.

¹¹³ *Senate Journal*, 1896, p. 166.

¹¹⁴ *Senate Journal*, 1896, p. 866.

¹¹⁵ *Senate Journal*, 1896, pp. 923, 924.

¹¹⁶ Some of the Senators made written explanations of their votes.

¹¹⁷ *Senate Journal*, 1896, p. 934.

his closing remarks the President of the Senate spoke as follows:

There may be a feeling of disappointment that all hoped for at the commencement of the session has not been accomplished, but this is inevitable. The value of your work cannot be measured by the number of bills passed. It is in the committee room where the best work is done, and this does not appear on the surface, nor do the public in general realize this. It is my judgment, after a somewhat extended experience, that never has there been more faithful and earnest work performed by the committees. Your labors have been incessant, and I believe in time that the people will endorse with the seal of approval the meritorious work you have performed.¹¹⁸

The real work of adopting the report of the Code Commissioners was thus delayed to a later session.¹¹⁹

NEWSPAPER COMMENT ON THE ACTION OF THE TWENTY-SIXTH
GENERAL ASSEMBLY

The action of the Twenty-sixth General Assembly was very fully chronicled in the newspapers of the State.¹²⁰ Owing to the depleted condition of the treasury there seems to have been a general opinion that the legislature should complete its consideration of the report of the Code Commissioners at the regular session and not put off the task.¹²¹

¹¹⁸ *Senate Journal*, 1896, p. 963.

¹¹⁹ Senator Trewin introduced Senate File No. 160, which was a bill for an act to codify the school laws, but this also failed to pass.—*Senate Journal*, 1896, pp. 118, 419, 679, and 704. Senate Files Nos. 439 and 440 relative to the payment of a balance to the Code Commission and the clerk of the Commission likewise failed to pass.—*Senate Journal*, 1896, pp. 695 and 873.

¹²⁰ In the preparation of this article the writer has selected, for obvious reasons, only three of the leading State papers from which to make his quotations. Two of these, representing the two leading political parties, were published in Des Moines, and the other was published at Burlington. A vast amount of material is to be found in other newspapers but could not be used in the limits of this paper.

¹²¹ A cartoon in *The Des Moines Weekly Leader*, Thursday, January 30, 1896, entitled "Will It Light" shows a carrion bird hovering over the State House, in the basement of which is printed "Treasury Empty".

From the accounts in the newspapers it is possible to gain a view of the attitude of the public toward the legislative action on the Code in a better manner, perhaps, than in any other.¹²² The plans which the two houses adopted for considering the Code are very clearly set forth in the following statements from one of the leading capital city papers:

The one important matter that the legislature has determined in the first week of the session, is the plan on which the code revision is to be handled. The house reached its determination of this important matter Saturday; the senate decided on its plan two or three days ago.

The plan in the senate, briefly, is this: The committee of fifteen, heretofore appointed, shall take charge of the code as revised, and distribute it, by subjects, to the standing committees which ordinarily would have jurisdiction over the respective subjects. The regular committees are to go over the work in detail, compare the old and new codes, and prepare their reports on the matters recommended by the commissioners. The reports from these committees will be made directly to the senate, which will take its final action on them.

The plan proposed for the house, adopted yesterday, is more complex, but those who have advocated it hold that it is better calculated for the management of so large a subject in so large a body as the house. The simpler system adopted by the senate might, from its very simplicity, open the way to too much discussion for a body with the membership of the house. Such, at least, is the argument advanced by those who have pushed the house plan to adoption.

It is proposed that the house shall have a general code committee of thirty-five. This committee shall be divided into five divisions, of seven members each. The code shall then be divided into five parts, as nearly as may be equal in importance and demands of time for their consideration. Each subdivision shall consider in detail the part referred to it; but this is limited by the provision that any regular standing committee may demand that any part of the code

¹²² Articles concerning the Code may be found in *The Iowa State Register* (weekly) of Des Moines, from February 6, 1896 to April 17, 1896, and in *The Des Moines Weekly Leader* from January 16, 1896 to April 16, 1896.

referring to those subjects over which it ordinarily would have jurisdiction, be referred to it; in case of which demand, the parts demanded shall be given by the subdivision of the general code committee to the regular standing committee.

The subdivisions will report directly to the house, as will also the standing committees on the parts which they consider.¹²³

The greatest amount of discussion was aroused by questions connected with the provisions relating to railroads, manufactures, and the holding of an extra session. It was predicted early in the session that the work of revision could not be finished at the regular session. In general, it appears that the Democrats were favorable to an extra session, judging from the following article from a leading Democratic paper:

Senator Harper of Burlington, one of the leaders of the democratic minority of the senate, and a member of the committee of fifteen on a plan for handling the code revision, is one of the leaders in the idea that an extra session of the legislature will be necessary before the code can be properly disposed of. Not only this, but he believes the extra session will have to be held, not at the close of the regular session, but a year hence. This for the reason that a large number of the members will be unable to spare the time from their private business after the conclusion of the regular session.

"I am decidedly of the opinion," said Senator Harper, "that the state will demand of us to make haste slowly in this important matter. It is important that the code revision be made very carefully. Besides this, we will find the regular business of the session pressing upon our attention. There are various matters of great importance to come before us, aside from the code revision. The question of resubmission is certain to demand our attention and take considerable time. The manufacturing bill will come up, and those members who are in favor of it will at least make their strongest fight in its behalf. Personally, I am doubtful about the success of the manufacturing bill. I anticipate that resubmission will be defeated. Should it carry, I feel that there is serious danger that the amendment might be adopted. I know there are many who

¹²³ *The Des Moines Weekly Leader*, Thursday, January 23, 1896, p. 4.

believe this impossible; but the fact remains that a very large element of the people in Iowa believe that prohibition is right; and there is another element whose number is hard to estimate that would vote for the amendment, not so much because they regard constitutional prohibition as the best method of dealing with the liquor question, but because they would consider the adoption of the amendment as a method of finally putting an end to the agitation that has been stirring up the state for so long."¹²⁴

In another issue this same paper protests as follows against any gulping of the Code:

The Leader has been one of those urging upon the legislature the folly and extravagance of an extra session. From the convening of the legislature to the present there has been scarce an issue which has not in some wise called the attention of the legislature to the fact that it would be necessary to show diligence to get through the ordinary work of the session and at the same time complete the code work. It has seen with regret that the legislature was not disposed to heed this advice, and that week after week has frittered away time over the age of consent bill and cigarette bills and similar legislation.

But much as it deploras an extra session and much as it believes that there has been no reason for it, there are some things worse. Serious doubt has been thrown upon the integrity of certain portions of the Code Commission's report. It has been publicly charged that particularly the sections of the present code governing railroads and legislative amendments thereto, have been emasculated. If this be true and the Iowa railroad laws in any of its essential features have been surreptitiously attacked, rather than have the legislature gulp the new code whole in the closing hours of the session it would be infinitely better to have an extra session.

The Leader, like all friends of public control of the railroads of the state, a policy to which the people of Iowa are thoroughly committed, views with suspicion any attempts to change even the phraseology of the existing railroad laws. It sees no necessity why these laws should not stand, without material change, even in verbiage. The courts in the past have never had great difficulty in getting at the legislative intent, and they would doubtless continue to

¹²⁴ *The Des Moines Weekly Leader*, Thursday, January 23, 1896, p. 3.

do so in the future. Merely as a matter of caution the friends of public control will insist that if there is to be any gulping of the code whole that that swallowed shall be the existing laws rather than new ones, as to which there may be doubt of judicial interpretation.¹²⁵

The Republican rival of the *Leader*, however, openly charged the Democrats with desiring an extra session in order to bring the Republican party into disrepute. In a stinging article *The Iowa State Register* declared:

The *Leader* is opposed to the new code, although it has professed to be in favor of it and is in favor of an extra session for the simple reason that it believes it would get the Republican party into a tangle. Perhaps the *Leader* is opposed to the new code for it proposes to tax certain banks in which the real proprietor of the *Leader* is interested. If the corporations are favoring the new code it is news to us. We profess we are astonished to hear such statements made. The *Register* is in favor of a new code if it will leave the laws practically as they are. It doesn't want any sudden, new fangled theories introduced. Especially is it opposed to increasing assessments in order that the tax eaters may increase both the taxes wrung out of the people and the constitutional indebtedness laid upon their shoulders. If a new code, very like the old code, only simplified and rearranged, can be adopted, let us have it. If not, let us have an early adjournment and no extra session. What is not done with the code at this session will remain undone until the next regular session.¹²⁶

The Clarkson paper was unusually bitter against the report of the Code Commission and when Senator Blanchard introduced his resolution to drop the consideration of the Code it made the following comment:

The people of Iowa are in favor of the prompt adoption of Senator Blanchard's resolution which provides that "no further consideration be given to the proposed code during the present session," and for "a new commission of one member" "to codify the existing laws without change or alteration, except to omit such laws

¹²⁵ *The Des Moines Weekly Leader*, Thursday, March 19, 1896, p. 4.

¹²⁶ *The Iowa State Register* (Des Moines), Friday, March 20, 1896.

as have been repealed," and to properly arrange all existing laws and thus compile "a code of laws which will require no further action on the part of the general assembly"—provided the word "present" be inserted before the words "general assembly," and provision be made for the submission of the code thus codified to the next legislature. Not a single state interest will suffer by the postponement of the code revision for another two years and many thousands of dollars of wholly unnecessary expense can thus be prevented from adding to the burdens of the state treasury.

The Republican legislators should promptly decide that there shall be no extra session, no increase in assessed valuation, no increase in rate of taxation, no revision of the code, and no over-appropriations by the present general assembly, and then proceed with the real and pressing business of the term which can be wholly completed within eight weeks.¹²⁷

Another article which shows the *Register's* hostile attitude toward the report of the Code Commissioners reads:

The code commissioners' revision is on its death bed and the legislature's most important duty is to promptly kill it beyond all possibility of resurrection. That revision was born in iniquity, reared to be able to speak for itself in its provisions for increasing litigation in every chapter and in almost every section, and the fight being made for the prolongation of its existence is partly for personal gain. The commissioners' revision cost the state treasury \$36,000, the additional costs added by the present legislature is about \$14,000 — a total of \$50,000 worse than thrown away — and it is still costing the state about \$1000 per day, for the legislature is doing little else than considering the revision and keeping an army of clerks and employes at labor thereon. All the doctors are desperately endeavoring to save the life of the moribund revision, but

¹²⁷ *The Iowa State Register* (Des Moines), Thursday, February 6, 1896, p. 4. In a column headed "In General and Particular" in the above issue are several paragraphs relative to the Code. "Senator Blanchard's resolution reads well and it hits off the new code in about the right way. Everyone in Iowa would be in favor of putting the new revision in the waste basket — were it not for the fact that the state has invested \$30,000 in it, mostly in salaries. We understand there are even some back salaries claimed for extra time put into the work of rewriting the laws of Iowa."

"In the case of the code commission all gall was divided into five, instead of three parts."

it will die, as it ought to die, and it ought to be promptly killed so as to save all further expense in its consideration. Let it die quickly and be buried under the unanimous contempt of public opinion. Every day's delay in killing it will cost the state treasury an additional \$1000. Kill it quickly and then proceed with the real and pressing business of the term.¹²⁸

Other newspapers, however, took the view that the revision was a task too great to be accomplished at the regular session, even by a body as capable as the members of the Twenty-sixth General Assembly. One paper summarizes the situation in these words:

While a revision of the code failed, together with an attempt at an independent revision of the revenue laws, it is unjust to charge the members of the assembly with unusual lack of industry. The Leader is of the belief that the code might have been finished at this session by protracting its duration, and the heavy expenses of an extra session avoided. That it was not is due more to the complicated form in which the proposed revision was presented, which caused a fear of its integrity, than to real lack of energy on the part of the members. This is especially true of the house, in which the committee work on the code was nearly completed, and in which it would have been completed but for the determination some time ago to abandon it.¹²⁹

THE CALL FOR AN EXTRA SESSION

The resolution which had passed both houses of the legislature stated that it was deemed advisable to complete the work on the code not later than January, 1897. It had also declared that such a result would be for the best interests of the State.¹³⁰ This, in effect, relieved the legislature from the responsibility of insisting on an adjourned session while it cast upon the Governor the blame should an extra session be called. At the same time it invited the chief executive to call such a session.

¹²⁸ *The Iowa State Register* (Des Moines), Friday, February 14, 1896.

¹²⁹ *The Des Moines Weekly Leader*, Thursday, April 16, 1896, p. 4.

¹³⁰ *Senate Journal*, 1896, p. 866.

During the summer of 1896, however, several events occurred which made it very necessary that an extra session be called. Four of the State institutions were damaged by fire and storm, the damage at one reaching \$125,000 and seriously crippling the efficiency of the plant.¹³¹ Consequently, on November 7, 1896, Governor Drake issued the following call:

Whereas, The People of Iowa, speaking through the General Assembly, have declared it to be advisable that the statutes of the state be revised and codified anew; and in accordance with that expression the Twenty-fifth General Assembly provided for the appointment of a commission to make such revision, and to make report to the Twenty-sixth General Assembly; which report was duly made at a large expense to the state; and

Whereas, The Twenty-sixth General Assembly has had the same under consideration and has found itself unable to complete the work of codification within the customary limits of a regular session; and has so declared itself; and

Whereas, Much work has been done upon the proposed code by the committees of that General Assembly, making the members more or less acquainted with its provisions, which work must be done anew, if the codification were postponed until another General Assembly;

Now therefore, concurring in the views expressed by the General Assembly, as above stated, and believing moreover that experience has demonstrated that a codification of the laws of the state can best be made at a session devoted especially to that work deeming that an extraordinary occasion has arisen such as is contemplated in the constitution, do hereby convene the General Assembly of the state of Iowa in special session, to be begun and held on Tuesday, the nineteenth day of January, A. D., 1897, at 10 o'clock, A. M., then to proceed with the consideration of the matters herein before set forth.¹³²

¹³¹ These events are enumerated in the extra session message of Governor Drake, found in Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, pp. 191-197.

¹³² Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, pp. 225-227.

Accordingly on January 19, 1897, the Twenty-sixth General Assembly convened in extra session and continued until May 11th, when it took a recess until July 1st, finally adjourning on July 2, 1897. The session proved longer than was expected, owing to the many important changes made in the statutes. The laws took effect ninety days after final adjournment.¹³³

In his extra session message Governor Drake enlarged on the subject of the Code as follows:

A learned and industrious commission has prepared a revision of existing statutes, and put them, with such changes and modifications as to the commission seemed advisable, in codified form, in which shape the result of their labors has been before you for more than a year. An opportunity has thus been afforded the members of the General Assembly, and to some extent the people at large, to familiarize themselves with the new measures proposed, with the enactments the omission of which is contemplated, with the amendments which are suggested to existing statutes, and with the form which it is proposed to give the body of our statute laws. Therefore, the members of the General Assembly come together prepared, I doubt not, with the aid of the mature deliberation they have been enabled to give to the work, promptly to expedite the business for which the session has been called.

It is gratifying to know that many of the existing laws of this commonwealth have been so founded in wisdom as to commend themselves to statesmen and publicists of not only our sister states, but other lands. Our state officers receive not a few testimonials to this effect. I may mention the legislation pertaining to railroads, to insurance, to dairy interests, and to oil inspection. Let us hope that the matters you have in hand will show a still stronger development of legislation thus found to commend itself.

It is unnecessary for me to remind the General Assembly that the people of the state are expecting the session to be of brief duration, and I doubt not that you are, as their representatives, in full sympathy with that feeling. Permit me to express the hope that your deliberations will eventuate in a Code of Laws that will give satis-

¹³³ *Code of 1897*, Preface, pp. iv, v.

tion to the people, while it will anew commend the legislation of
 s great Commonwealth to approval beyond our borders.¹³⁴

In forecasting the action of the legislature *The Des Moines Weekly Leader* declared that there were two views
 what should be done. One group, headed by Governor
 rake, maintained that the legislature should confine its
 tivities strictly to those subjects enumerated in the call,
 hile the other group wanted the General Assembly to
 nsider any and all subjects of legislative importance.
 e *Leader* thought that the "strict constructionists"
 ould seek to pass a resolution that would limit legislative
 ctivity, but should this happen the various interests would
 rce the legislators to enact new laws by way of amend-
 ents to the Commissioners' report.¹³⁵ In fact, the Senate
 ommittee on Code Revision instructed its chairman, Mr.
 . A. Carpenter, to "present a resolution that
 o bills will be allowed to be admitted except relating direct-
 to code work or to the suggestions of the governor's
 essage."¹³⁶

The Iowa State Register, in noting the convening of the
 extra session declared that:

The members can make a good impression upon the people by re-
 aining diligently at their work until Saturday night and resuming
 on Monday morning. There will be no junkets this year for there
 no need of them and we believe that the members will be showing
 fine realization of public sentiment if they will work without the
 customary visits to their homes. They are here on urgent business
 -or else why an "extraordinary" session?—and the best thing
 at can be done is to treat the session from first to last, as such.
 ast winter the members were fulsome in their statements that 30
 ays, 40 at most, would suffice for the code work. Now let there be
 remembrance of those promises and a fulfillment of them. Let

¹³⁴ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. II, pp. 191-197.

¹³⁵ *The Des Moines Weekly Leader*, Thursday, January 14, 1897, p. 4.

¹³⁶ *The Des Moines Weekly Leader*, Thursday, January 21, 1897, p. 1.

there be no evasions of those promises now, now that "we are here anyhow".¹³⁷

LEGISLATIVE ACTION AT THE EXTRA SESSION

Shortly after the opening of the extra session, on January 19, 1897, the Speaker of the House appointed five code committees¹³⁸ and shortly afterwards Mr. W. W. Cornwall moved that the committee on the distribution of the proposed "Code Revision of the regular session" be ordered to reintroduce the Code into the House and make the same distribution thereof as had been made at the regular session.¹³⁹

On the second day of the session Mr. F. F. Merriam offered a resolution which was adopted, providing that a joint committee of ten should be appointed "to arrange the division of the proposed Code into bills for the purpose of introduction into the respective Houses."¹⁴⁰ This resolution also passed the Senate on the same day.¹⁴¹ The members appointed by the Speaker of the House were W. S. Allen, J. H. Funk, W. W. Cornwall, M. L. Temple, and H. H. Brighton, two of whom were chairmen of the House Code Revision Committees.¹⁴² President Parrott of the Senate appointed Senators N. M. Pusey, H. L. Waterman, W. H. Berry, A. B. Funk, and C. S. Ranck.¹⁴³

¹³⁷ *The Iowa State Register* (Des Moines), Friday, January 22, 1897.

¹³⁸ These committees had about twenty members each, a list of whom can be found in *House Journal*, 1897, pp. 3, 4. Their place and time of meeting may be found on pp. 31, 32. On the afternoon of this day Mr. J. T. P. Power proposed that each chapter be introduced as a distinct bill, while Mr. Parley Finch proposed that each committee in reporting any part of the *Proposed Code* mark on the margin of the bill the place where such parts could be found in former codes. Both resolutions were laid over for further consideration.—*House Journal*, 1897, p. 29.

¹³⁹ *House Journal*, 1897, p. 5.

¹⁴⁰ *House Journal*, 1897, p. 30.

¹⁴¹ *House Journal*, 1897, p. 34.

¹⁴² *House Journal*, 1897, p. 36.

¹⁴³ *Senate Journal*, 1897, p. 36.

On January 22nd the commissioners who had been sent to the interstate meeting on uniform legislation reported to the General Assembly, stating that it was too late to incorporate their report in that of the Code Commission and consequently they were reporting directly to the General Assembly.¹⁴⁴ The reform upon which they laid especial emphasis was the uniform negotiable instruments act.¹⁴⁵

On January 23, 1897, Mr. Parley Finch introduced a resolution which called for a committee of five whose duties should be "to designate where the laws of the Twenty-sixth General Assembly of a general nature be incorporated in the new code."¹⁴⁶ This was adopted two days later in the House,¹⁴⁷ but failed of concurrence in the Senate.¹⁴⁸ In the meantime, however, a concurrent resolution which had originated in the Senate was adopted by both Houses. It provided that the joint committee of ten above referred to should report to the two houses a common plan for the adoption of the titles and chapters of the *Proposed Code*.¹⁴⁹

The work of considering the report of the Code Commission was begun early in the extra session and the reports of five divisions of the Code Revision Committee are to be found in the proceedings of the first week of the session.¹⁵⁰ Various code bills were also introduced during this period.¹⁵¹

¹⁴⁴ *House Journal*, 1897, p. 50. The report was signed by L. G. Kinne, Emlin McClain, and H. O. Weaver.

¹⁴⁵ This subject will be mentioned under the discussion of the supplements to the Code.

¹⁴⁶ *House Journal*, 1897, p. 62.

¹⁴⁷ *House Journal*, 1897, p. 65.

¹⁴⁸ *House Journal*, 1897, p. 77.

¹⁴⁹ *House Journal*, 1897, p. 65.

¹⁵⁰ *House Journal*, 1897, pp. 52, 53, 54, 55, 68, 69, 70, etc.

¹⁵¹ Code bills introduced in the House may be found in the *House Journal*, 1897, pp. 43-57, 74, 75, 361, 364, 378, 550, 737, and 818. Senate code bills received in the House are to be found in the *House Journal*, 1897, pp. 130, 152, 204, 263, 268, 291, 362, 384, 529, 576, etc.

The general laws enacted at the regular session of the Twenty-sixth General Assembly needed to be included in the Code as it would be enacted, so Mr. O. A. Byington of Iowa City offered a resolution on January 22nd, providing that a committee of five should distribute the various laws "to the appropriate Code revision committees".¹⁵² This committee, which consisted of O. A. Byington, Samuel Mayne, H. K. Evans, John T. P. Power, and W. I. Hayes reported eight days later, on January 30, 1897, assigning all the laws of a general nature to the five committees.¹⁵³

On January 30, 1897, a concurrent resolution was received in the House from the Senate which provided that the committee appointed to divide the *Proposed Code* into chapters be continued and instructed to report what means "if any can be devised whereby time may not be consumed in unnecessary reading of the several bills in each House."¹⁵⁴ After the resolution had been adopted in the House the joint committee reported on February 9th, making both a majority and a minority report. The majority reported that they were in favor of rushing the work to completion but they recommended "that each bill should have a full reading in each house before the vote thereon is taken."¹⁵⁵ The minority report, signed by Mr. M. L. Temple, suggested that each bill be read by title only and that nothing except amendments be read before the vote on the bill.¹⁵⁶

Two weeks had now elapsed since the opening of the

¹⁵² *House Journal*, 1897, p. 51.

¹⁵³ *House Journal*, 1897, p. 109.

¹⁵⁴ *House Journal*, 1897, p. 112.

¹⁵⁵ *House Journal*, 1897, pp. 171-174.

¹⁵⁶ *House Journal*, 1897, pp. 174-177.

On the 2nd of February the following concurrent resolution was adopted by the House: Resolved, "that the committees of the two Houses to which have been referred the several Code bills, shall refer before reporting said bills to their respective Houses, in order that an agreement may be had, if possible, on said bills before they are reported." *House Journal*, 1897, p. 129.

extra session and much had been accomplished in the way of committee work. One writer declared that:

The legislature has completed the second week of the special session, and is now fairly down to routine work on the code. It is pretty well established that no effort will be made to introduce extraneous subjects of radical character into the code work. The revision will be made with the design of restoring, generally, as nearly as possible, the words of the old laws, and many changes have been made in this direction.

The session will not be a short one. Nobody now expects a six weeks' session to complete the work, although many ventured the opinion at the beginning that this would be ample. The general opinion is now that twelve weeks of good work will be needed to complete the code. But with this conviction has come a feeling of confidence that when it is done the work will be a creditable one, and that the time will have been well spent.¹⁵⁷

On February 6, 1897, Mr. David Brant of Cedar Rapids offered a resolution calling upon the Secretary of State to secure a copyright on the codified laws which were then being enacted.¹⁵⁸ The purpose evidently was to prevent the publication of a private edition which would seriously affect the sale of the official work.¹⁵⁹ The resolution was adopted in the House on the ninth of February,¹⁶⁰ but does not appear to have ever been reported from the Committee on Code Revision to which it was referred in the Senate.¹⁶¹ The Code, however, was copyrighted by the Editor, E. C. Ebersole, as provided by law.

¹⁵⁷ *The Des Moines Weekly Leader*, Thursday, February 4, 1897, p. 2. Other articles concerning the Code are to be found in this paper during the extra session, from January 21, 1897 to May 13, 1897.

¹⁵⁸ *House Journal*, 1897, p. 160.

¹⁵⁹ Owing to the failure to copyright the *Code of 1873* a private edition was quickly placed on the market.—See Powell's *History of the Codes of Iowa Law* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. XI, pp. 218, 219.

¹⁶⁰ *House Journal*, 1897, p. 179.

¹⁶¹ The question of copyrighting, however, was considered at some length in the Senate and this action will be discussed later. See *Code of 1897*, p. 3.

Early in February there appears to have been a considerable amount of discussion concerning the annotation of the Code. Strong arguments were advanced on both sides of the question. The following enlightening article on this subject appeared in one of the Des Moines newspapers under the heading *Annotating the Code*:

After we get the code, what are we to do with it? This is a question already seriously asked. It seems that when the legislature shall have completed its labors and shall have condescended to its satisfaction the various sections, that the state will have by no means reached the end of the expense. The code must have an editor, we are told, and be carefully edited and indexed, and perhaps annotated, before it is given to the public — all of which of course must be paid for by the public.

It is admitted that it will be necessary to edit and index the code, but as to annotation there is doubt. In favor of annotation one optimistic gentleman, with a cast of mind clearly entitling him to be engaged in the next campaign as result predictor, has figured it out that if the state will only annotate the code it will be able to sell many thousand copies, at prices which will in large part repay the state for the expense of code revision and publication. These figures have had an attractive look and many have been wooed by them. But now comes ex-Supreme Court Reporter Ebersole, who is a candidate for code editor, with a long circular letter in which he shivers the annotation proposal. The point of the letter is that annotation could not be accomplished by one man within the constitutional time for the code to go into effect. Mr. Ebersole says that the sovereign state of Iowa would hardly wish to steal the annotation of the McClain or Miller codes, and that mere paraphrasing also would not do; that to annotate the new code de novo would require the most painstaking search through the 100 odd volumes of the Iowa code and the most laborious work in bringing into the text, following each section, the holdings of the supreme court with reference thereto. This would not be the work of months but of years, and in view of this fact the state, certainly not wanting to plagiarize from either Miller or McClain, may profitably let the annotation scheme drop. An annotation commission following the code commission would be a severe dose. It may much be doubted whether,

ter it was annotated, if the code would "pay out," even for this part of its preparation. The lawyers of the state, after having been obliged in the matter of having had a new code made for them, with its opportunities for increased litigation, may properly be asked to wrestle their own annotations. The burden should not be shifted upon the public.

Even as to indexing it does not seem that it should be necessary to go to a large expense and get a high priced editor. The index of the new code will not be much different from the index of the old one. The arrangement into chapters is about the same, the sections as far as possible have been preserved, the subjects treated are practically the same, and with the old index as a dummy it would not be the great and erudite task some would have us believe to amend the index. When the code was first indexed the task was a large one, but for the new code most of the work is already done and only necessary changes need be made. The legislature should be cautious about authorizing new code expenditures. It has cost a good deal already. Under present circumstances it would be perhaps unwise to undertake annotation, and for the mere mechanical editing and indexing it is not necessary to go to great expense.¹⁶²

¹⁶² *The Des Moines Weekly Leader*, Thursday, February 11, 1897, p. 4.

In a letter to the writer bearing date of January 18, 1913, Mr. E. C. Eberle declared that he had not been able to find a copy of this letter but would state the facts relating to it from memory. After stating that he was especially interested in the bill, owing to the preparation of the encyclopedia of law on which he had labored for years, and having had an experience of eight years as Reporter of the Supreme Court, he continues:

"When I considered the bill I concluded that it was impracticable. The code was to be *annotated*, and was to be in print the first of the next October. I thought it my duty to express my opinion to the members of the general assembly, and thus possibly save the state from great inconvenience. Therefore I prepared and had printed a rather lengthy letter and mailed a copy to each member of the legislative body. I was rewarded by receiving promptly a good many letters and telegrams of appreciation.

"The chief point of my letter was that *no number* of annotators could prepare the annotations in proper manner within the time allotted. Men of experience in such work would not be available, and new men would hardly learn how before the annotations would be called for by the printer. There were other reasons why I thought the work could not be completed within the time, but I do not now clearly recall them. . . .

"I was elected editor by the unanimous vote of the general assembly, and entered upon my duties as soon as it adjourned. I knew that I had an almost

On February 22, 1897, Mr. H. K. Evans of Corydon offered a concurrent resolution in the House which provided for the appointment of a joint committee of two members from the House and one from the Senate, who were to perform various duties.¹⁶³ Among these duties were to ascertain the cost of printing and binding five, ten, fifteen, and twenty thousand copies of the Code without annotations, to determine how soon these volumes could be prepared, to consult with the Attorney General and find out whether it would be advisable to copyright the Code, and to report a bill for editing and indexing. When this resolution was called up for consideration it was amended by having the membership increased to three from the House and two

impossible task, and I worked hard through long hours. But I found that members of the general assembly who happened to be in the city, and others interested, would make frequent calls on me to see how it was progressing and to show their good will. This would have been delightful had I not realized, as they did not, that it would defeat the work. I had no time to be a 'good fellow', which I much regretted, but not so much as I would regret a failure to get the code out on time. It must be borne in mind that all prior laws stood repealed October first, and that if the code was not out the courts would be without statute law for the time. To head off this interference I published a printed statement showing the condition of the work, and stating clearly that unless I could have my time without interruption it could not possibly be completed on time. This was a hard dose for me to administer, but it 'worked'.

"In my work as editor I discovered some serious discrepancies in the new statutes, especially affecting cities under special charters, and I made note of them, and called the attention of the city attorneys of the cities of this class thereto, so that when the general assembly met in its last and special session, or rather adjourned session, ending July 2nd, 1897, everything was prepared for the adjustment of these discrepancies, and for the correction of a few palpable errors which had also been discovered.

"I trust that when the code is again revised sufficient time will be allowed to do the work without the extreme pressure that was felt in the editing and publishing of the Code of 1897. That it was finally published within the prescribed time I regard as a lucky accident rather than a normal accomplishment. Any person at all familiar with such work will understand this when the magnitude of the work is considered, and it is remembered that it was all done between the last part of May and the first day of October. Matters of such importance should be done with reasonable deliberation, and the great State of Iowa is well able to pay for the best that can be produced."

¹⁶³ *House Journal*, 1897, p. 288.

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from the Senate.¹⁶⁴ Accordingly, L. A. Ellis and J. H. Trewin were appointed from the Senate and H. K. Evans, C. C. Dowell, and Walter I. Hayes from the House.¹⁶⁵ This committee reported on April 2, 1897, at considerable length, recommending that the State publish an annotated Code in an edition of 15,000 copies. The cost of the first edition was estimated at \$2.25 per volume. In connection with the report were two lengthy opinions from the Attorney General in which he gave his opinion in regard to the right of the State to copyright the Code, and also as to the time of taking effect of the laws. In regard to the latter point he held that the legislature had the power to determine the time at which the laws should take effect.¹⁶⁶

At this point in the extra session newspaper comment was at its height. Current opinion seems to have been that the legislature should make the most of a bad job and finish the work as speedily as possible. The editor of *The Burlington Hawk-Eye* wrote as follows:

A number of days of personal inspection during the past week of the work of the general assembly; a study of its methods of legislation and a knowledge of the aims and desires of the members, as freely expressed in private conversation, leads the editor of *The Hawk-Eye* to the conviction that good, honest, earnest work is being done by the peoples' representatives and inspires the confident belief that the result of their efforts will be gratifying to the people. The *Hawk-Eye* was originally opposed to an extra session, and it still questions the wisdom of a revision of the code at this time when the state could ill-afford the expense; but, revision, having been provided for by the previous general assembly and a vast amount of labor expended upon it by the code commission, at large cost to the state, there seemed to be no other course open to the

¹⁶⁴ *House Journal*, 1897, p. 294.

¹⁶⁵ *Senate Journal*, 1897, p. 733. Mr. H. K. Evans was the secretary of the committee.

¹⁶⁶ These reports may be found in the *House Journal*, 1897, pp. 681-694; and the *Senate Journal*, 1897, pp. 730-743.

26th general assembly than to complete the task. Whether it might not have been better to let the work of the commission go unfinished was a debateable question last winter, but it is so no longer, as now the quickest way out of the perilous stream is to swim for the other shore.

And, to complete the simile, the members are "swimming," with long and vigorous strokes. They are working diligently and faithfully. Few of their constituents are doing harder work. No one can appreciate the magnitude and complexity of the task without personally visiting and watching the process of revision. The details are innumerable and require the most scrupulous care to avoid errors. The previous labors of the code commission shaped the outline and greatly lessened the detail work; but in order to conscientiously discharge their duty to the state the senators and representatives are giving their close personal attention to every item; indeed, to every word and even the punctuation and the possible variance of meaning in the phraseology.

While *The Hawk-Eye* has urged, and still urges the expediting of the revision, it does not urge, and no citizen can rightly insist upon, haste at the expense of accuracy and completeness. The extra session will require at least three months time and the work, when finished, will be creditable to the state and to its faithful servants who are striving to make the new code as perfect as possible. The legislators are following conservative lines, avoiding radical changes and adhering closely to experience and the dictates of common sense. The product will be the best code the state ever had.¹⁶⁷

A writer in a Des Moines paper declared:

Four weeks of the session are past and the commonest prediction is that the adjournment will not be reached before April 15, and possibly May 1. The experience of the last week has not been encouraging. The committees have shown that they can do work much faster than the house can pass bills. The senate, for instance, has devoted practically the working time of its sessions for the past four days to the elections bill, and that measure is not yet completed, and some parts of it that have been adopted are in process of reconsideration. And it is an easy measure, compared to many in the revision. It has been found that, however carefully the

¹⁶⁷ *The Burlington Hawk-Eye*, Thursday, February 11, 1897.

committees may do their work, there will be contests and time-killing debates on the floor. Minor points are raised, despite the most skilful piloting, and they are made occasions for elaborate debates with which the members themselves are disgusted after they are over, but there is no help for it.¹⁶⁸

About the time that the above was written the following article appeared in a Burlington paper:

"I regard code revision as a great mistake," remarked a leading Burlington lawyer to *The Hawk-Eye* a few days ago. "There was no real need for it. We were getting along very well under our present code; many of the statutes had been passed upon in the courts and the community had adjusted itself to settled conditions. Now everything will be unsettled, and it will be a long time before the real status of Iowa law will be fixed. I admit it will be a good thing for the lawyers, a very good thing, giving them increased business, but it is bad for the public, and as a citizen I regret the revision."

Apropos of this view from the standpoint of a lawyer is the following from the Iowa Capital:

"A member who has been looking up the acts of the legislature of 1874 remarked upon the fact that the session laws of that year were crowded with little amendments of the Code that had been passed in the extra session of 1873. So many errors had crept into it by hasty consideration that it kept the legislature busy the next session correcting these mistakes. The same thing is likely to occur this time, only as there are so many more laws the mistakes are likely to be more numerous. It is inevitable in the consideration of such a large amount of matter. This member thought that it should be a warning to the members to be very careful in their work."¹⁶⁹

After the joint committee had reported as above noted it introduced House File No. 95, which was a bill for an act to provide for the annotation, indexing, editing, publishing, and distributing of the Code.¹⁷⁰ This, along with a similar house bill, was indefinitely postponed.¹⁷¹ The question of

¹⁶⁸ *The Des Moines Weekly Leader*, Thursday, February 18, 1897, p. 2.

¹⁶⁹ *The Burlington Hawk-Eye*, Thursday, February 18, 1897, p. 4.

¹⁷⁰ *House Journal*, 1897, pp. 694, 754, 772, and 1006.

¹⁷¹ House File No. 116, in *House Journal*, 1897, pp. 1080, 1082.

annotating the code was only settled in the House after a long and hard struggle, in which Mr. S. Mayne of Bancroft sought to introduce a bill granting the work to Callaghan and Company of Chicago, the publishers of *McClain's Code*.¹⁷²

Much discussion took place during the session in regard to printing the Code. Charges were made that the State Printer and the State Binder were charging exorbitant prices for the State work, and many editors were in favor of letting the Code work out by contract.¹⁷³ The legislature finally gave the task to the State Printer by a large vote, refusing to ask for bids.¹⁷⁴ The following is a newspaper comment on this action:

The printing and binding of the new code should be by a contract, the lowest responsible bidder getting the work. The size of the volume, the number to be printed and the character of the contents being known, the specifications are at hand on which bids may be solicited. It is a single job and a large one. The edition is 15,000 and the number of pages about 2,000. For the binding alone it is

¹⁷² The substitute of Mr. Mayne is found in the *House Journal*, 1897, pp. 830-833. It appears that Callaghan and Company had made an offer to the State to print the Code. At this time there was considerable agitation over the State printing question. The substitute proposed by Mr. Mayne was lost. The following quotation from *The Iowa State Register* (Des Moines), of April 23, 1897, is a comment upon this incident:

"Confronted with the problem of annotating, publishing and distributing the proposed new code, and there being a bill pending for this work to be done by the state, the legislature has begun making inquiries concerning the cost of the work. Friday, McClain and Callaghan, publishers, of Chicago, the former being Chancellor McClain, of Iowa City, author of McClain's Code, made a proposition to publish for the use of the state 7000 copies of the code for \$20,000. They agree that the books shall be printed on the best of white paper, bound in the best quality of law sheep and after the supply for the state is furnished, be put on the market for purchase by the public for \$5 for each copy."

¹⁷³ A great deal concerning the State printing question may be found in the *House Journal* for 1897 and in *The Iowa State Register* (Des Moines), from January to May, 1897.

¹⁷⁴ *House Journal*, 1897, pp. 812, 830, 848-854, 924, 925. The vote stood 20 yeas and 73 nays on the Mayne substitute.

proposed to give the state binder \$1 per volume, or \$15,000, and the typesetting, proof reading and press work are additional.

There is color of excuse for having a state printer do the miscellaneous work of the state; the kinds of work are so various that it is impossible, in every instance, to tell in advance what would be a fair price. But as to a \$20,000 or \$25,000 job, such as the printing and binding of the annotated code, with an editor at a large salary and assistants at \$10 a day, the legislature has committed a great act of folly. Such a book will find no market. It will not be able to compete against the private annotation of the code. The private annotation of the code is a growth, the result of work extending over many years. It has the confidence of the legal profession, a confidence which a half-baked annotation, prepared hastily under the direction of some favorite of the legislature, cannot expect to gain until it has proven merit. At best the annotation of the code by the state is a woeful waste of money, and is a crowning blunder to the many the legislature has committed in code revision work.

The legislature having made a mistake in ordering the annotation of the code, it will commit a grave abuse if it orders its printing and binding except under conditions to secure the work at the lowest market price. The state printer and binder pretend that they will get no profit at the prices proposed to be given them. If so, it is no unfriendliness to refuse them the work unless their prices are the lowest. But it is mere pretense that there is no profit in the code work. Their anxiety to prevent a letting under contract system proves that it is a pretense. Members of the legislature have said that they were desirous of getting the state's work done at the lowest possible prices. Here is an opportunity to make a trial. Let the code be let by contract. Let bids be invited, and then let the legislature compare prices under the contract system with the prices under the favor system.¹⁷⁵

Clarkson Brothers, who edited and published *The Iowa State Register*, were perhaps the most bitter of all the editors of Iowa against the system of State printing. One of their articles reads as follows:

At least 50,000 and perhaps 100,000 copies of Iowa's new code will be sold, if it is properly annotated, before the laws of Iowa are

¹⁷⁵ *The Des Moines Weekly Leader*, April 15, 1897, p. 4.

again wholly revised. Iowa should annotate, copyright and publish her own code; and can do so cheaply and profitably by letting her printing and binding to the lowest responsible bidders. Callaghan & Co., and other law book publishers, make a harvest field of Iowa because this state continues to pay enormous prices for state printing and binding. Callaghan & Co. have probably made at least \$100,000 clear profits on "McClain's Annotated Statutes," and a large proportion of that profit should have gone into Iowa's state treasury. The only relief for Iowa from enormously extravagant prices for state binding and state printing, will be through letting all the state printing and binding to the lowest responsible bidders "under adequate and satisfactory security for the performance thereof," just as Michigan does and has been doing ever since the constitution of that state was adopted.¹⁷⁶

In a later number the same paper declares: "A level price of \$1 for binding the new codes, 15,000 of them! A \$1 — that is what they bind single copies for, but when it comes to 15,000 of them. Look out for innocent Senegambians of ebony hue."¹⁷⁷

By two resolutions introduced on April 30, 1897, it was suggested that the editor of the Code, together with the House members of the supervising committee, be elected on the following Tuesday, May 4th.¹⁷⁸ Accordingly on the evening of that day the two houses met in joint session and gave a unanimous election to Mr. E. C. Ebersole of Tama County — there being 111 votes cast.¹⁷⁹ In the afternoon session the House elected Mr. Parley Finch, Mr. W. W. Cornwall, and Mr. J. T. P. Power as its members of the Code Supervising Committee.¹⁸⁰ Previously a resolution was adopted calling on the Code Supervising Committee to

¹⁷⁶ *The Iowa State Register* (Des Moines), Friday, March 5, 1897.

¹⁷⁷ *The Iowa State Register* (Des Moines), Friday, April 16, 1897.

¹⁷⁸ *House Journal*, 1897, pp. 935, 937.

¹⁷⁹ *House Journal*, 1897, pp. 981-983.

¹⁸⁰ *House Journal*, 1897, pp. 980, 981. Senators J. H. Trewin and L. A. Ellis were chosen from the Senate.

make an itemized statement of all its expenditures and submit the same to the Auditor of State.¹⁸¹

On May 5th a joint resolution was received from the Senate and passed by an overwhelming vote, allowing the use of the committee rooms in the capitol to the Code Supervising Committee. In addition this committee was allowed necessary supplies such as stationery and stamps.¹⁸²

At the close of the session the question of annotation again bobbed to the surface. The act authorizing the publication and annotation of the Code authorized the employment of not less than three annotators at \$10 per day.¹⁸³ The Code Supervising Committee saw the impracticability of this plan, owing to the short length of time allowed, and accordingly entered into negotiations with Mr. Emlin McClain, who had the annotations very nearly up to date. Mr. McClain offered to annotate the Code for \$7500 and to perform certain other tasks in connection therewith.¹⁸⁴ On May 10th, therefore, the Supervising Committee asked that the original act be so changed as to enable them to accept Mr. McClain's offer. The legislature accepted the view of the committee and passed the resolution as requested.¹⁸⁵

On May 11, 1897, the legislature adjourned until July 1, 1897, in order to give the Code Supervising Committee and the Code Editor time to complete their work within 90 days after final adjournment, as the Constitution provided that all laws passed at an extra session should take effect ninety days after adjournment.¹⁸⁶ When the General Assembly met pursuant to adjournment, on July 1st, Mr. Par-

¹⁸¹ *House Journal*, 1897, p. 973. See also p. 977.

¹⁸² *House Journal*, 1897, pp. 1000, 1003.

¹⁸³ *Laws of Iowa*, 1897, Ch. 20, Sec. 5, p. 24.

¹⁸⁴ *House Journal*, 1897, pp. 1057-1059.

¹⁸⁵ *Laws of Iowa*, 1897, pp. 47, 48.

¹⁸⁶ *Constitution of Iowa*, Art. 3, Sec. 26, in the *Code of 1897*, p. 86.

ley Finch submitted a report from the Code Supervising Committee which is very interesting and instructive. The Committee had met on May 7th and had organized by electing Mr. J. H. Trewin, Chairman; L. A. Ellis, Vice Chairman, and Parley Finch, Secretary. They then explained the contract entered into with Mr. Emlin McClain, the method of doing the work, and closed their report by declaring that "your committee is confident that the Code will be completed by October 1, 1897."¹⁸⁷

In his speech at the close of the session Speaker H. W. Byers reviewed the history of the Code down to the close of the extra session. After tracing it through two sessions of the legislature he declared that the "Black Code" was "a marvel of excellence and accuracy."¹⁸⁸

The action of the House of Representatives on the *Proposed Code* at the extra session of the Twenty-sixth General Assembly was long and tedious. To follow its intricate details would be tedious and of small value, but it may be safely said that the House showed a commendable spirit of industry in dealing with the many and various questions brought before it.¹⁸⁹

The action of the Senate upon the *Proposed Code* was

¹⁸⁷ *House Journal*, 1897, pp. 1078-1080.

¹⁸⁸ *The Des Moines Weekly Leader*, Thursday, May 13, 1897, p. 2. This may also be found in the *House Journal*, 1897, pp. 1062-1066.

¹⁸⁹ *The Des Moines Weekly Leader* on Thursday, May 13, 1897, after calling attention to the fact that the session had extended over 113 days and was very long and expensive, and that the direct cost of the Code would not be much less than \$300,000, declared that "the legislature seems to have worked hard", and remarked that:

"Most of the work of the session was of an exceedingly dry and technical character, the consideration of the details of the laws in regard to which there is not dispute. Few changes, taken as a whole, have been made in the old laws. The statutes have been rewritten, and, it is claimed, simplified, the obsolete and the contradictory being eliminated, but for the most part the substance has not been altered. In view of this fact, there are many who now think that the whole movement for a new code was conceived in folly, and that the state lunged into entirely needless expense."

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likewise very elaborate and intricate, and follows to a large degree the same plan as adopted in the House of Representatives.¹⁹⁰ On the first day of the session Senator L. A. Ellis presented two resolutions, one providing that no new subjects of legislation should be considered until the work on the Code was finished, except under certain considerations, and the other providing that eight men from the House and seven from the Senate be appointed to "select and determine the titles or parts of titles of the Code reported by the Code Commission, to be introduced in each body as House bills and Senate bills, and recommend a course of procedure to facilitate the business of this legislature." Both of these resolutions were "laid over."¹⁹¹

On the second day of the session two more resolutions were offered dealing with the mode of procedure. Mr. C. A. Carpenter of the Code Revision Committee offered one which provided that the Senate should limit its action to certain measures.¹⁹² Mr. J. H. Trewin suggested that the proposed revision be referred to the Committee on Code Revision, which should divide it and assign the different parts to the various standing committees, and this suggestion was adopted.¹⁹³ Shortly after Senator Trewin's resolution was referred a concurrent resolution was received from the House asking the appointment of a joint committee of ten to arrange for considering the Code. This was likewise referred to a committee and, upon a favorable report, was adopted by the Senate.¹⁹⁴

¹⁹⁰ The general laws passed are enumerated in the *Senate Journal*, 1897, p. 1215. A partial list of the code bills introduced into the Senate may be found on pages 43-46 and 53-56.

¹⁹¹ *Senate Journal*, 1897, p. 32.

¹⁹² *Senate Journal*, 1897, p. 33.

¹⁹³ *Senate Journal*, 1897, p. 33.

¹⁹⁴ *Senate Journal*, 1897, pp. 34, 35, 36. The reports of this committee may be found on pp. 47, 48, 57, 66, and 80.

On January 21, 1897, the third day of the session, Senator Trewin introduced Senate File No. 1, which was a bill "to provide for annotation, indexing, publication, distribution and sale of the Code and statutes hereafter enacted". After a stormy career, both in the House and in the Senate, and after having been considerably amended, it was enacted into law,¹⁹⁵ although by a later act, proposed by the Code Supervisory Committee, it was again amended before the close of the session.¹⁹⁶

On January 28, 1897, Senator Trewin from the Committee on Code Revision presented a report distributing the laws of the Twenty-sixth General Assembly to the various standing committees to be by them incorporated into the *Proposed Code*.¹⁹⁷

Later, on February 25, 1897, Senator Trewin offered the following resolution, which was adopted in both branches of the legislature:

WHEREAS, The rules of the supreme court have been amended from time to time and it is desirable to have them revised and published with the Code; therefore, be it

Resolved by the Senate, the House concurring, That the judges of the supreme court be and are hereby requested to revise the rules of said court so that the same may be published with the Code.¹⁹⁸

¹⁹⁵ *Senate Journal*, 1897, pp. 37, 896, 979, 983, 1008, 1013, 1017, 1025, 1027, 1043, 1045, 1052, 1061, 1062, 1088, 1089, and 1209.

¹⁹⁶ *Senate Journal*, 1897, pp. 1221, 1223, 1229, and 1230.

¹⁹⁷ *Senate Journal*, 1897, pp. 81-83.

Various other resolutions looking to the speedy consideration of the Code were introduced. The report of the committee in regard to dispensing with the reading of the Code may be found on pp. 194-197.

On February 9th a resolution was also adopted in the Senate which stipulated that "the President of the Senate and the Speaker of the House, be requested to separate Code bills for consideration of the two houses in such a way as that bills first considered in one house shall be considered in the other house as messages from the house in which they were first considered."—*Senate Journal*, 1897, pp. 198, 204, 206.

¹⁹⁸ *Senate Journal*, 1897, pp. 337, 383.

On the same day, upon the motion of Senator William B. Perrin the Committee on Code Revision was instructed to consider the advisability of incorporating a section or sections providing for proof of lost wills.¹⁹⁹ Accordingly on March 9th William B. Perrin, J. M. Junkin, and William Eaton presented such a provision for the action of the Senate.²⁰⁰

The House resolution relative to printing the Code was received from the House on February 23rd and was concurred in on the following day.²⁰¹ On February 23rd, also, Senator L. A. Ellis introduced a resolution calling for a joint committee of five "to obtain information and report to the respective houses in regard to the desirability of providing for the annotation of the proposed new Code by this General Assembly."²⁰² The question of annotation has already been discussed in connection with the consideration of the *Proposed Code* in the House, and the above resolution was one of the steps in this controversy.

About the middle of March a resolution was received from the House which called for the appointment of a joint committee of six — three from each house — to supervise the work and to keep in touch with the progress made, and to report from time to time.²⁰³ On April 3rd Senator Thomas Bell introduced a resolution calling on this committee to make reports, but the committee does not seem to have complied with the intent of the resolution.²⁰⁴

On the third of May two very important resolutions were introduced in the Senate. One provided for an adjourn-

¹⁹⁹ *Senate Journal*, 1897, p. 347.

²⁰⁰ *Senate Journal*, 1897, pp. 452, 453.

²⁰¹ *Senate Journal*, 1897, pp. 319, 331.

²⁰² *Senate Journal*, 1897, p. 316.

²⁰³ *Senate Journal*, 1897, pp. 550, 560.

²⁰⁴ *Senate Journal*, 1897, p. 744. The resolution of Senator Bell was "laid over".

ment to July 1st, and was later adopted.²⁰⁵ The other provided for the election of the Senate members of the Code Supervisory Committee. On the following day the election was held and on the first ballot Senator L. A. Ellis received 25 ballots, James H. Trewin 16, and B. F. Carroll 4. Senator Carroll moved that the two receiving the highest number of ballots be declared elected, and the vote upon the motion was unanimous.²⁰⁶

THE CODE SUPERVISING COMMITTEE

The Code Supervising Committee was a new development in the history of the codes of Iowa law. The *Code of 1851* was edited by one man; the *Revision of 1860* was also edited by a single individual, who was assisted in certain matters by the Census Board, and the *Code of 1873* was prepared by a single editor under a statute giving explicit directions. For the first time, therefore, a committee of the General Assembly was appointed to supervise the work of the Code editor.

The chairman of the committee was James H. Trewin of Lansing, who with Lyman A. Ellis, the vice-chairman, was one of the most influential members of the legislature in the consideration of the Code. Mr. Trewin was born near Bloomingdale, Illinois, on the 29th of November, 1858, and removed to Iowa in 1872, where he was admitted to the bar ten years later, in 1882. During the Twenty-fifth General Assembly he served in the House of Representatives, while he was a member of the Senate from the Twenty-sixth to the Twenty-ninth General Assemblies, inclusive. At present Mr. Trewin is engaged in the practice of law in Cedar Rapids and is President of the State Board of Education. He is a Republican in politics.²⁰⁷

²⁰⁵ *Senate Journal*, 1897, p. 1101.

²⁰⁶ *Senate Journal*, 1897, p. 1110.

²⁰⁷ Gue's *History of Iowa*, Vol. IV, p. 266.

Lyman A. Ellis, the other Senate member of the Committee, was likewise a Republican in politics. Senator Ellis was born in Vermont on March 11, 1835, and came to Iowa in 1861, locating at Lyons. He served as District Attorney for a time and in 1893 was elected to the State Senate where he served during the consideration of the *Code of 1897*.²⁰⁸

Mr. Parley Finch of Humboldt, the secretary of the commission, was a Republican in politics and was one of the three members appointed from the House of Representatives. Mr. Finch was born in Bradford County, Pennsylvania, in September, 1844. After removing to Iowa he read law and was admitted to the bar in 1871. He served several terms in both branches of the legislature.²⁰⁹

Mr. W. W. Cornwall, of Spencer, the other Republican Representative on the committee, was born at Albion, Dane County, Wisconsin, on February 10, 1857. After his graduation from the University of Wisconsin in 1881, he located in Iowa and represented his district for two terms in the House of Representatives. Since 1902 he has held the position of Reporter of the Supreme Court.²¹⁰

The only Democratic member of the committee was Mr. John T. P. Power of Keokuk, who served in the House during the Twenty-sixth and Twenty-seventh General Assemblies.²¹¹

The editor of the Code was Mr. Ezra C. Ebersole of Toledo, who was born at Mt. Pleasant, Pennsylvania, on the 18th of October, 1840. His education was received at Otterbein University and at Amherst College, from which he graduated in 1862. After serving a short enlistment in the army he taught at Western College and at the State Univer-

²⁰⁸ Gue's *History of Iowa*, Vol. IV, p. 87.

²⁰⁹ *The Courts and Legal Profession of Iowa*, Vol. II, pp. 692, 693.

²¹⁰ *History of Clay County, Iowa*, 1909, pp. 428-430.

²¹¹ *Iowa Official Register*, 1911-1912, p. 105.

sity at Iowa City. From 1883 until 1891 Mr. Ebersole was the Reporter of the Supreme Court of Iowa, and he has published an *Encyclopedia of Iowa Law*.²¹²

Justice Emlin McClain, who furnished the annotations, has already received notice in this paper.²¹³

THE PREPARATION OF THE CODE

Immediately after their appointment, the editor and the Code Supervising Committee set to work on their task. The laws were first read and apparent errors, such as mistakes in punctuation, were corrected. The Code Supervising Committee then relieved Mr. Ebersole of all other duties and for two months he spent all his time on the index. The proof reading was done by Mrs. C. A. Neidig and Miss Capitola Mardis, who were the clerks of the committee.²¹⁴

The annotations, as before noted, were furnished by Mr. Emlin McClain, who was assisted by Mr. Theodore Anderson, who was connected with the Law College of the State University.²¹⁵ The proof of the annotations was read by Mr. McClain.²¹⁶ According to the report of the committee, the price of the Code, including annotations, had been reduced from thirteen dollars to five dollars per volume, while the actual cost of producing amounted to only two dollars and fifty cents per copy. The profit thus made was expected to pay for the book in due time.²¹⁷ The plates from which

²¹² Gue's *History of Iowa*, Vol. IV, p. 85. See also *The Courts and Legal Profession of Iowa*, Vol. II, pp. 1024, 1025.

²¹³ See note 37 above.

²¹⁴ *Code of 1897*, Preface, p. v.

²¹⁵ Mr. Theodore Anderson was librarian of the Law School of the State University of Iowa for a time and prepared a brief manuscript on the *History of the Iowa Codes* which has been of material assistance to the writer. Mr. Anderson's paper has never been published. Mr. Ralph Otto, who assisted Mr. Anderson, was subsequently an attorney in Iowa City, Mayor of Iowa City, and is now on the faculty of the College of Law of the State University of Iowa.

²¹⁶ *Code of 1897*, Preface, p. v.

²¹⁷ *Code of 1897*, Preface, p. v.

the Code was printed were electrotyped by the Star Engraving Company of Des Moines and deposited with the Secretary of State, and as will be seen, were used in the publication of a second edition in 1902. The printing was done by F. R. Conaway, the State Printer, and the binding was done by Lafayette Young, the State Binder. There was considerable discussion at the time concerning the binding of the Code, as has already been noted.²¹⁸

The act providing for the publication of the Code required the editor to secure the copyrighting of the work, "and its entire arrangement and publication,"²¹⁹ and then to assign the copyright to the State of Iowa. The act also further provided that the *Code of 1897* should be "the official edition and the only authoritative publication of the existing laws of the state."²²⁰ As a consequence, there has been no private compilation since 1897 to compete with the official publication, although a large number of advertising pamphlets containing the laws of Iowa have been distributed.²²¹ The act also called for an edition of 15,000 volumes, which were to be ready for distribution by October 1, 1897.

CONTENTS OF THE CODE

The Code as finally published consists of 2362 printed pages, the contents of which are arranged under twenty-six titles, each of which is divided into chapters, and these in turn into sections, of which there are 5718.

Immediately following the title page is the preface and

²¹⁸ See above notes 157 and 172.

²¹⁹ *Code of 1897*, Sec. 11, p. 3.

²²⁰ *Code of 1897*, Sec. 27, p. 5.

²²¹ These advertising booklets are often distributed by banking institutions. Two examples of such booklets which might be mentioned are *Iowa Laws Made Plain* presented by the Iowa City State Bank, 1912, and *Laws of Iowa—Condensed Edition of the New Code of 1897* which was a supplement to *The Evening Gazette* (Cedar Rapids), Vol. XV, No. 312, Saturday, January 8, 1898.

an editorial note, dated September, 1897, in which Mr. Eber sole, the editor, states that the synopsis of the Constitution of the United States was taken from Hough's *American Constitutions*. He further declares that he also availed himself of "all the helps and suggestions to be derived from other indexes of substantially the same subject matter."²²²

Following a table of contents there is considerable space devoted to tables of "Corresponding Sections". In these tables it is possible to find the sections containing the same subject-matter in *McClain's Annotated Code* of 1888 and in the session laws of the Twenty-third to Twenty-sixth General Assemblies, inclusive.²²³

In addition to the laws passed by the legislature, the Code contains the Rules of the Supreme Court,²²⁴ and the temporary provisions which related to the publication of the Code.²²⁵ Several important State and federal documents, such as the Declaration of Independence, the Constitution of the United States, the Ordinance of 1787, and the Constitution of Iowa, are also to be found preceding the laws which constitute the "Code".²²⁶ The annotations cite the Iowa reports except in certain cases where the *Northwestern Reporter* is cited and in the case of Federal decisions, where the *Federal Reporter* is cited.²²⁷

It is manifestly impossible to enter into a discussion concerning the numerous changes and new sections to be found

²²² *Code of 1897*, Preface, p. vii.

²²³ *Code of 1897*, Preface, pp. xi and xxiv.

²²⁴ The rules of the Supreme Court were adopted at the May Term, 1897, and were to take effect October 1, 1897. They consist of 108 sections and are to be found in the *Code of 1897*, pp. 2151-2167.

²²⁵ *Code of 1897*, pp. 1-5.

²²⁶ *Code of 1897*, pp. 6-111.

²²⁷ The *Northwestern Reporter* is cited on pp. 489, 476, and the Federal reports at p. 473 of the *Code of 1897*.

in the *Code of 1897*.²²⁸ Two new sections concerning corporations, however, may be found in sections 1640 and 1641, providing for the dissolution of a corporation and the appointing of receivers therefor, and granting certain rights of property to foreign corporations.²²⁹ Another new section concerning corporations is the one providing for a form of acknowledgment in the conveying of real estate. This form appears to have been recommended by the American Bar Association in 1882.²³⁰ But the most unusual of the corporation provisions is, perhaps, section 1608 which reads as follows:

Except as otherwise provided by law, a single person may incorporate under the provisions of this chapter, thereby entitling himself to all the privileges and immunities provided herein, but if he adopts the name of an individual or individuals as that of the corporation, he must add thereto the word "incorporated."

Professor Horace L. Wilgus declares that so far as his knowledge extends, Iowa "is the only state that permits this."²³¹ The section, however, is to be found in the *Code of 1851* and the succeeding Iowa codes.²³²

One of the important new chapters which may also be noted is the one which contains the collateral inheritance tax law passed the previous year by the Twenty-sixth Gen-

²²⁸ In the *Code Supplement of 1907* may be found a table giving the corresponding sections in all of the codes of Iowa law. A glance at this table will show the reader whether the particular section is new in the *Code of 1897*.

²²⁹ See Horack's *Some Phases of Corporate Regulation in the State of Iowa* in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. II, p. 515.

²³⁰ *Code of 1897*, Sec. 2959. This form was recommended by the American Bar Association in 1882. (5 Report 304.) A list of the other States that have adopted the same form is to be found in Wilgus's *Cases on the General Principles of the Law of Private Corporations*, Vol. I, pp. 863, 864.

²³¹ Wilgus's *Cases on the General Principles of the Law of Private Corporations*, Vol. I, pp. 889, 890.

²³² *Code of 1851*, Sec. 702; *Revision of 1860*, Sec. 1179; *Code of 1873*, Sec. 1088.

eral Assembly.²³³ The school laws, which are contained in Title XIII are codified in logical order.²³⁴

Many of the chapters relating to various State boards and officials appear for the first time in a code of Iowa statutory law. Among such may be mentioned the chapters relating to the Geological Survey, to the Inspectors of Petroleum Products, to the Dairy Commissioner, and to the Fish and Game Warden.²³⁵ The last mentioned chapter contains three new sections, one of which abolishes the office of fish commissioner; another provides for the appointment of deputy game wardens, and one makes it a punishable offense for a common carrier to receive any game for transportation, contrary to the provisions of the chapter.²³⁶

In 1887 the District Judges of the State had met in convention at Des Moines pursuant to an act of the legislature and had laid down certain "Rules of Practice". These are to be found at various places in the *Code of 1897* in the chapters relating to pleading and trial of actions.²³⁷

The great number of annotations made the *Code of 1897* a very bulky book. Nevertheless, they have been of great aid to the legal profession, though misleading perhaps, in some instances, to the layman. This fact is well stated by Mr. Ebersole as follows:

Non-professional readers of the Code need to be advised that the annotations do not always express the law as it is today. They are notes of decisions rendered upon *prior* and often very *different* statutes. For example, under section 2357 of the Code is a note of a decision in 58 Iowa, 256, in relation to the liability of a party to

²³³ *Code of 1897*, pp. 550-553, Secs. 1467-1481.

²³⁴ *Code of 1897*, pp. 906-972, Secs. 2621-2857.

²³⁵ *Code of 1897*, Title XII, Chs. 10, 11, 13, and 15.

²³⁶ *Code of 1897*, Secs. 2563, 2562, and 2557, respectively.

²³⁷ This convention was provided for by Ch. 134 of the *Laws of the Twenty-first General Assembly of the State of Iowa*. The rules of practice as adopted are to be found in *McClain's Annotated Code and Statutes*, 1888, Vol. I, pp. lvii-lix.

aid in the erection of a partition fence. That decision was based upon a statute which is now repealed, and is no longer the law of the state. Section 2355 now fixes the liability of adjoining land owners to contribute to partition fences. Again, under section 3376 of the Code are found notes of many decisions holding that when a man wills to his wife a portion of his real estate, and fails to say that it is in lieu of her dower, she will take dower also, unless in the nature of the case she cannot take both. Such *was* the law, but it is so no longer; for section 3270 now declares that in such a case the portion given to the wife shall be *presumed*, unless the intention is clear and explicit to the contrary, to be in lieu of her dower. It might be asked, Why then were those notes inserted? For the common people they would better have been omitted, but for the lawyer, who often needs to understand the *history* of legislation and judicial decisions, they are of great value.²³⁸

The legislature was responsible for including the annotations of all the decisions of the Supreme Court, for the act providing for the publishing of the work decreed that the three competent attorneys who should be employed to do the work should include all the decisions of the State Supreme Court, as well as of the United States Supreme Court and other Federal courts when interpreting Iowa statutes.²³⁹

In his biennial message to the legislature of January 11, 1898, Governor Francis M. Drake commented on the new Code as follows:

Besides the usual legislation there was required a revision of all the laws of the state and the formation, adoption, and publication of the new code, which, put into a magnificent volume, is now in the hands of the people for their information and convenience. This of itself required much time and labor, but its great benefit to the state amply compensates therefor.²⁴⁰

In the same message Governor Drake called the attention

²³⁸ Ebersole's *Encyclopedia of Iowa Law*, Sec. 32, pp. 13, 14.

²³⁹ *Laws of Iowa*, 1897, p. 24.

²⁴⁰ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, p. 123.

of the legislature to discrepancies in the Code, declaring "A few defects (very few in view of the magnitude of the work) have been met with in the new code, which require action by the general assembly."²⁴¹

There is no doubt that in the limited time in which the work on the Code was prosecuted a considerable number of inaccuracies of varying degrees of importance were made and these soon became manifest. As a consequence many amendments and additions to Code sections are to be found in the session laws of 1898. It must be admitted, however, that in view of the magnitude of the undertaking and the limited time in which the work was done, the *Code of 1897* is remarkably free of errors.

There was little subsequent legislation concerning the *Code of 1897*. During the session of 1898, the Code Supervising Committee made its report. This report is very clear and gives a splendid account of the progress of the work on the Code from the time of the appointment of the Code Supervising Committee on May 4, 1897, until the completion of the work. After describing in detail the method of carrying on the work it mentions one phase of the proceeding which is very interesting in relation to the preparation of the Code. It appears that Mr. Emlin McClain had a contract with a Chicago law publishing firm, and when a contract was entered into between Mr. McClain and the State, this firm started legal proceedings. This incident is best described in the words of the Committee:

After about 1,500 pages of the code had been electrotyped and printed, Callaghan & Co., a law book publishing house of the city of Chicago, and the publishers of McClain's annotated code of Iowa, under contract with him, brought suits in the United States court at Dubuque and Des Moines, to enjoin Mr. McClain from furnishing annotations for the code and to enjoin the state printer from print-

²⁴¹ Shambaugh's *Messages and Proclamations of the Governors of Iowa*, Vol. VII, p. 182.

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ing annotations, alleging in substance that said Emlin McClain was under contract with said company to furnish annotations to it only, that it was the owner of the annotations to McClain's codes of 1884 and 1888, which he was using in annotating the code, and that the state through the General Assembly and its committees, had notice and knowledge of such alleged facts and the terms of the contract.

Upon the hearing of the applications for injunctions before Judges Shiras and Woolson of Dubuque and Des Moines respectively, it was conclusively established that McClain's codes were copyrighted in his own name and that neither the General Assembly nor any of its committees or members had any knowledge or notice whatever of the terms of the contract between Callaghan & Co. and McClain or of the nature of the business relations existing between them. The injunctions were denied and Mr. McClain completed his contract.²⁴²

The report then states that the printing of the *Code of 1897* had been completed about September 20, 1897, and that a number of copies were delivered prior to October 1, 1897. On account of some errors made in constructing the work it became necessary to cut out the erroneous pages and to paste in corrected pages. The committee also states that many lawyers made requests to have the *Northwestern Reporter* cited in the annotations, in addition to the State reports, but that the Code was partly printed before such requests were made, and, in the absence of legislative authorization, it was thought best to omit such citations.

Another interesting part of the report is the appendix consisting of the three divisions, the first of which gives a copy of the contract entered into with Mr. McClain, and the last two being itemized expense accounts. From these it may be learned that the actual cost of the Code, as determined by the committee, was \$40,200.68, or \$2.68 a copy for the edition of 15,000. The cost to purchasers of the Code was likewise reduced from \$13.00, the price paid for *McClain's Code*, to \$5.00.

²⁴² *House Journal*, 1898, pp. 90, 91. The report may be found on pp. 89-99.

The binding used on the Code was a cause of much newspaper discussion as has already been noted. The committee, evidently for the purpose of learning the true facts, employed Mr. P. C. Kenyon of Des Moines, a practical binder, to make an examination of the materials used. His report to the committee was that the materials used were of the very best grade.

Two other actions were taken at this session of the legislature in regard to the Code. One was a concurrent resolution which originated in the Senate, providing for the furnishing of a copy of the Code to the Federal courts in Iowa.²⁴³ The other, as finally enacted, was a bill amendatory to the law providing for the publication of the Code, passed by the extra session of the Twenty-sixth General Assembly, and permitted State officials to publish extracts from the laws pertaining to their departments in their annual or biennial reports.²⁴⁴

Two years later, in 1900, there was some minor legislation relative to the Code. The bill just mentioned was again amended so as to read: "The executive Council may also authorize the publication by private individuals of extracts from the laws."²⁴⁵

Perhaps the most important act at this session relative to the Code was the passage of a bill, which originated in the Senate, providing for the appointment of a joint committee of three from each house whose duties were to "carefully revise and codify all the special assessment laws, and such other laws in relation to the government of municipal corporations, as may be by the committee deemed necessary and expedient, and recommend such changes therein as may

²⁴³ *Senate Journal*, 1898, p. 264; *House Journal*, 1898, p. 296.

²⁴⁴ *Laws of Iowa*, 1898, Ch. 1, p. 13. A substitute proposed in the House may be found in the *House Journal*, 1898, p. 600.

²⁴⁵ *Laws of Iowa*, 1900, Ch. 1, p. 1.

be desirable."²⁴⁶ The committee was also instructed to make its report to the Twenty-ninth General Assembly in the form of a bill and also to make an explanatory report. The Speaker of the House appointed Representatives George W. Dunham of Manchester, Charles J. Wilson of Washington, and William Theophilus of Davenport as members of this committee;²⁴⁷ and the President of the Senate appointed Senators James H. Trewin of Lansing, Thomas D. Healy of Fort Dodge, and W. A. McIntire of Ottumwa.²⁴⁸

In 1902 the Twenty-ninth General Assembly provided for a second edition of the Code, of 7500 copies. The work was to be superintended by the Code Supplement Supervising Committee which was given power to correct the plates where errors occurred, to change the citations from the *Northwestern Reporter* to the Iowa reports and to insert the index prepared for the *Code Supplement* rather than the regular index, or to omit the index altogether and publish only references to the "amendments and subsequent enactments."²⁴⁹

The edition of 7500 additional copies of the Code was accordingly made at a cost of \$14,063.37, or \$1.88 per volume — the binding alone costing \$1.10 per volume.²⁵⁰ The second edition of the Code contains thirty-four more pages than the original. In addition to the preface, there are tables showing where the corresponding section may be found in the *Code of 1873* and in the session laws from the Fifteenth up to and including the Twenty-sixth General Assembly. Another table cites all the cases in the Code,

²⁴⁶ *Laws of Iowa*, 1900, Ch. 176, pp. 128, 129.

²⁴⁷ *House Journal*, 1900, p. 1241.

²⁴⁸ *Senate Journal*, 1900, p. 1097.

²⁴⁹ *Laws of Iowa*, 1902, Ch. 211, p. 164.

²⁵⁰ The report of the Code Supplement Supervising Committee on the second edition of the Code may be found in the *House Journal*, 1904, pp. 681, 682.

reference to which is given in the *Northwestern Reporter* showing where such cases may be found in the official reports. Some of the cases thus listed are not to be found in the Iowa official reports. A third table shows all the sections in the *Code of 1897* that were amended and repealed by the Twenty-seventh, Twenty-eighth, and Twenty-ninth General Assemblies.²⁵¹

The first supplement to the *Code of 1897* was issued in 1902 and the subsequent legislation deals largely with the various supplements. Very few copies of the Code are being sold at the present time, the sales during the year 1910 amounting to only \$266.50.²⁵²

THE CODE SUPPLEMENT OF 1902

When the *Code of 1897* was under discussion one of the chief objections to it was that it would be out of date in a very short time and the State would be put to great expense in keeping such a volume up-to-date. This objection was answered by the statement that at regular intervals a supplement could be issued. A provision was placed in the act which provided for the publication of the *Code of 1897* to this effect, and, accordingly, during the session of the Twenty-ninth General Assembly, action was taken to provide for such a work.²⁵³

The Twenty-ninth General Assembly met on the 13th day of January, 1902.²⁵⁴ Eight days later, in the Senate, Mr. James H. Trewin introduced Senate File No. 1, which was a bill for an act to provide for compiling the laws of all the sessions of the legislature held since the appearance of the *Code of 1897*.²⁵⁵ This compilation was to include the anno-

²⁵¹ *Code of 1897* (Second Edition), pp. xxiv-1-xxiv-31.

²⁵² *Iowa Official Register*, 1911-1912, p. 195.

²⁵³ *Code Supplement of 1902*, Preface. See also *Code of 1897*, Sec. 24, p. 5.

²⁵⁴ *Senate Journal*, 1902, p. 1.

²⁵⁵ *Senate Journal*, 1902, p. 67.

tations of decisions rendered up to and including the May (1902) term of the Supreme Court. It was to be a supplement to the Code and there was also a provision in the bill for the appointment of a supervising committee.

On the 6th of February, Chairman Thomas D. Healy of the Judiciary Committee reported the above bill to the Senate with the recommendation that it be passed.²⁵⁶ Later in the same day, on motion of Senator Trewin, the bill was unanimously adopted in the Senate.²⁵⁷ One week later, in the House, on motion of George W. Clarke, the bill was likewise passed without a dissenting vote.²⁵⁸

On March 4, 1902, Senator Trewin introduced a bill calling for the publication of a second edition of the Code. This was finally passed by both houses, also without any dissenting votes.²⁵⁹

It will be recalled that a Municipal Code Committee had been appointed in 1900 to revise and codify the laws relating to special assessments in cities.²⁶⁰ This committee made a very full and complete report to both houses and a bill was introduced providing for a system of accounts in cities, but after some consideration it was dropped.²⁶¹ Sev-

²⁵⁶ *Senate Journal*, 1902, p. 191.

²⁵⁷ *Senate Journal*, 1902, p. 195.

²⁵⁸ *House Journal*, 1902, pp. 307, 308.

²⁵⁹ *Senate Journal*, 1902, pp. 440, 506, 556, 557; and *House Journal*, 1902, pp. 723, 780.

²⁶⁰ *Laws of Iowa*, 1900, Ch. 176, pp. 128, 129.

²⁶¹ It appears that the Municipal Code Committee was appointed as a result of the efforts of the League of Iowa Municipalities. It considered many recommendations submitted to it by the League and took favorable action on most of them. One writer declares that "very few changes in the municipal law not recommended by the League were made." The Iowa State Bar Association also appointed a committee, consisting of George W. Ball of Iowa City, William H. Baily of Des Moines, C. W. Bingham of Cedar Rapids, J. W. Bollinger of Davenport, and J. H. Quick of Sioux City, to report on certain municipal laws, which after being considered by the Association were to be referred to the Municipal Code Committee. The report of the above committee of the State

eral other bills relative to municipal government were however, passed.²⁶²

The act which provided for the *Supplement of 1902* states that an edition of 15,000 should be printed, which should conform in size, type, arrangement, and other details, as nearly as possible to the Code, and when finished should be distributed and placed on sale at \$2.00 per volume. The work was to be completed by September 1, 1902.

The act further provided for the appointment of a Code Supplement Supervising Committee which was to have the general supervision of the work. It also appropriated \$1500 for the compensation of the editor of the Supplement, who was to be responsible to the above committee. These men were to incorporate in the Supplement all the general laws of the Twenty-seventh to Twenty-ninth General Assemblies. The numbering was also provided for sections added to Code sections being numbered with letter after the original section number, as Sec. 100-a.²⁶³

The Senate appointed James H. Trewin of Lansing, W. F. Whipple of Vinton, and Claude R. Porter of Centerville and the House of Representatives appointed Frank S. Payne of Centerville, W. K. Barker of Cresco, and Albert W. Hamann of Davenport, as members of the Code Supplement Supervising Committee.²⁶⁴ These gentlemen pur-

Bar Association was made in 1901.— See *Proceedings of the Iowa State Bar Association*, 1900, p. 164; and 1901, pp. 116-121; *Midland Municipalities*, Vol. II, No. 3, June, 1901, pp. 70-72; and Horack's *The League of Iowa Municipalities* in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. I, pp. 202-204.

²⁶² For a list of some of these bills see *Senate Journal*, 1902, pp. 259, 260.

²⁶³ *Laws of Iowa*, 1902, Ch. 194, pp. 147-149.

It might here be noted that in 1902 the Executive Council authorized Judge S. H. Fairall to get out a collection of laws entitled *Township Laws of Iowa* which contained, in addition to the laws relating to townships, various annotations and blank forms. This little volume contains 214 pages and was printed at Davenport by Egbert, Fidler & Chambers.

²⁶⁴ A biography of Mr. W. K. Barker may be found in the *Annals of Iowa* 3rd Series, Vol. V, p. 640.

hased the annotations from Mr. Emlin McClain for the sum of \$1800. They also contracted with Bernard Murphy, State Printer, for the printing, and with Howard Tedford, the State Binder, for the binding. This latter item amounted to the sum of \$11,176.50 for 14,902 volumes.²⁶⁵ The Supplement contains 874 pages.

The entire work was copyrighted by the editor, John R. Carter, and the copyright assigned to the State as provided by law.²⁶⁶ The electrotyping was done by the Star Engraving Company.

There are numerous tables, prepared by Mr. Carter, to be found in the first part of the book. The first table shows where the various acts of the Twenty-seventh, Twenty-eighth, and Twenty-ninth General Assemblies are to be found in the Supplement. Another table shows all the sections or parts of the *Code of 1897* that have been amended or repealed. This is followed by the provisions relating to the Code Supplement and to the Code. The rules of the Supreme Court adopted at the May term, 1901, are also included in this Supplement.²⁶⁷

The index to the Supplement is very extensive and is an improvement over the index to the Code itself. It covers two hundred and ninety-three pages, citing both the Code and Code Supplement sections, the latter being denoted by the mark "s" before the section number.

It would be a useless task to call attention to any considerable number of the laws contained in the Supplement. No new law is to be found in the work, all the sections having been passed at the three previous sessions of the legislature. Some of these laws, however, were of very

²⁶⁵ *House Journal*, 1904, pp. 680, 681.

²⁶⁶ *Laws of Iowa*, 1902, Ch. 194, Sec. 3, p. 147.

²⁶⁷ *Code Supplement of 1902*, pp. 578, 579.

great importance. The legislation in reference to municipalities has already been noted.²⁶⁸ The sections relating to taxation and the assessment of taxes are deserving of attention, especially those relating to the collateral inheritance tax which contain the rules laid down by the district judges for the assessment and collection of the same. Actuary tables are printed in connection with the sections just mentioned. One entire new chapter appears, being Chapter 9-A, of Title V, and consisting of the act concerning the "improvement of the channels of meandered streams within the corporate limits of certain cities." This act was passed by the Twenty-ninth General Assembly.²⁷⁰

Perhaps the most important of the new legislation is the uniform negotiable instruments act which is to be found in Sections 3060-a1 to 3060-a198. This act, which is in force in nearly all of the leading commercial States, was adopted by the Twenty-ninth General Assembly.²⁷¹ Mr. Carter, the editor, annotated this law so far as the Iowa decisions are concerned and introduced a new feature into the Supplement by citing annotations of the decisions of courts in other States.²⁷² The latter were taken from the second edition of John J. Crawford's *Annotated Negotiable Instruments Law*. In commenting on this feature of the Supplement Mr. Justice Deemer remarks: "This last feature is an invaluable aid to uniformity in construction, which is quite as important as similarity in language. The committee

²⁶⁸ See notes 261 and 262 above.

²⁶⁹ *Code Supplement of 1902*, pp. 145-158. The rules mentioned were drawn up by Chief Justice H. E. Deemer and District Judges S. M. Weaver, L. Fellows, H. M. Towner, Z. A. Church, and M. J. Wade, pursuant to Sec. 6, C. 37, *Laws of Iowa*, 1898, p. 28.

²⁷⁰ *Code Supplement of 1902*, pp. 88-91.

²⁷¹ *Code Supplement of 1902*, pp. 352-395. Considerable information concerning the Uniform Negotiable Instruments Law may be found in Huffcutt's *The Law of Negotiable Instruments* (First Edition), 1898.

²⁷² *Code Supplement of 1902*, Editorial Note, p. iv.

entitled to great credit for introducing this apparent innovation."²⁷³

Various editorial notes appear throughout the work, some of which refer to the Code for earlier annotations, and are consequently needless. Typographical errors are to be found, but this could hardly be otherwise in a work of this size.

There appears to have been little subsequent legislation concerning the *Code Supplement of 1902*. In 1904 a bill was passed authorizing the Secretary of State to exchange the Code and Supplement with foreign countries, and to furnish copies thereof to the colleges of the State.²⁷⁴ The Code Supplement Supervising Committee also made its final report at this session of the legislature.²⁷⁵

In 1906 several acts were passed relating to the documents of the State, apparently the only one relating directly to the Code being one concerning the report of the county auditors on the sales of codes and session laws.²⁷⁶ In the House a resolution was adopted requiring the Speaker to appoint a committee of five to report upon necessary amendments to the Code and Supplement, and to the laws of the Thirtieth General Assembly, in order to make them conform to the constitutional amendments just previously adopted.²⁷⁷ The committee appointed consisted of M. L. Temple of Osceola, Robert M. Wright of Fort Dodge, H. L. Spaulding of Elma, C. N. Jepson of Sioux City, and R. C. Langan of Clinton.²⁷⁸

²⁷³ Book review, by Justice H. E. Deemer in *THE IOWA JOURNAL OF HISTORY AND POLITICS*, Vol. I, p. 120. The review is of the *Supplement to the Code of Iowa* and is to be found on pp. 118-121.

²⁷⁴ *Laws of Iowa*, 1904, p. 128.

²⁷⁵ *House Journal*, 1904, p. 680. Also *Senate Journal*, 1904, p. 633.

²⁷⁶ *Laws of Iowa*, 1906, p. 1. See also pp. 2-4.

²⁷⁷ The amendment referred to is Sec. 16, Art. XII, relating to Biennial Elections.— See *Iowa Official Register*, 1911-1912, p. 59.

²⁷⁸ *House Journal*, 1906, p. 57.

The *Supplement of 1902* remained in active use only five years, being replaced in 1907 by the Supplement of that year.

It has been described as being a well executed piece of work. It contained a new idea in the citations under the uniform negotiable instruments act and as Mr. Justice Deemer declared, "this Supplement is not only invaluable to the lawyer, but to every layman who has occasion to know the law as well."²⁷⁹ The later Supplement, however, containing as it did all legislation subsequent to 1897, completely replaced the *Supplement of 1902*.

THE CODE SUPPLEMENT OF 1907

The history of the *Code Supplement of 1907* is very similar to that of the *Supplement of 1902*. The law provided that every third General Assembly after the Twenty-ninth should provide for the publication in a supplement of all the laws passed subsequent to the Code.²⁸⁰ This duty was thus imposed on the Thirty-second General Assembly which convened on January 14, 1907.²⁸¹

On January 28th Senator George W. Dunham of Manchester introduced a bill providing for the appointment of a Code Supplement Supervising Committee and authorizing the publishing of a supplement. After some amendments relative to the salary of the editor, the bill was unanimously passed by both houses.²⁸²

The act as passed is almost identical with the act providing for the *Supplement of 1902*. It calls for a joint committee of three from each house, and an editor at a salary of \$1500, who shall compile all the laws passed subsequent

²⁷⁹ Book review by Justice H. E. Deemer in THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. I, p. 120.

²⁸⁰ *Code of 1897*, Sec. 24, p. 5.

²⁸¹ *Iowa Official Register*, 1911-1912, p. 125.

²⁸² *Senate Journal*, 1907, p. 144.

to the Code, and secure annotations down to and including the May term, 1907. The act further provided that 12,000 copies should be prepared, uniform in printing, size, and binding with the Code, that it should be sold at \$3.00 per volume, and be ready for distribution by the first of October, 1907.²⁸³

At this same session a law was also passed appointing a commission of three members with power to "rearrange, revise and codify the existing laws relating to the public schools, and recommend additional needed legislation."²⁸⁴ This committee made an extended report nearly two years later, in the form of a proposed bill.²⁸⁵

On the 23rd of January, the editor of the Supplement had been elected by the two houses in joint session.²⁸⁶ This was five days previous to the introduction by Senator Dunham of the bill authorizing the Supplement. On February 25, 1907, the President of the Senate appointed Senators George W. Dunham of Manchester, J. L. Warren of Pella, and Sherman W. DeWolf of Reinbeck as members of the Code Supplement Supervising Committee.²⁸⁷ On the following day the Speaker of the House of Representatives appointed E. W. Weeks of Guthrie Center, C. W. Hackler of Fort Dodge, and C. G. Sparks of Eldon to serve on the Committee.²⁸⁸

The *Supplement of 1907* is almost twice as large as the *Supplement of 1902*, containing 1552 pages. The annotations in the *Supplement of 1907* were furnished by Mr.

²⁸³ *Laws of Iowa*, 1907, Ch. 221, pp. 223, 224.

²⁸⁴ *Laws of Iowa*, 1907, Ch. 222, p. 225.

²⁸⁵ The committee consisted of Frederick E. Bolton of Iowa City, William H. Baily of Des Moines, and Arthur Springer of Wapello. Their report was very elaborate but failed of passage.— See *Report of the Educational Commission*, 1908.

²⁸⁶ *Senate Journal*, 1907, pp. 137, 138.

²⁸⁷ *Senate Journal*, 1907, p. 478.

²⁸⁸ *House Journal*, 1907, p. 549.

Justice McClain,²⁸⁹ while Mr. James H. Trewin and M. J. R. Carter gave assistance in various ways to the Code Supplement Supervising Committee and editor. The editorial note was dated in October, 1907. In fact, the task imposed by the legislature was so great that the book could not be completed on time. The plan of the later supplement follows closely the plan of the earlier work. This was done, as the editor explains because the general plan of the 1902 work met with general approval, the bar was accustomed to it, and legislation had been enacted with reference thereto.²⁹⁰

The tables in the Supplement are very extensive and cover 219 pages, perhaps the most important being the "Table of Corresponding Sections", showing where each section in the Code and in the *Supplement of 1907* may be found in former codes and in the session laws since 1860. As in the case of the *Supplement of 1902*, various editorial notes are also to be found scattered throughout the book. The revised rules of the Supreme Court and the rules of the Board of Law Examiners are also to be found in this collection of statute laws.²⁹¹ The index fills three hundred and fifty-seven pages.

A considerable number of important new laws appear in the *Supplement of 1907*, those being considered new which were passed at the three previous sessions of the legislature. Among these may be noted the Primary Election Law, passed by the Thirty-second General Assembly,²⁹² the law regulating fire insurance policies,²⁹³ and the sections relating to fraternal beneficiary societies.²⁹⁴ The new legis-

²⁸⁹ *Code Supplement of 1907*, Preface.

²⁹⁰ *Code Supplement of 1907*, p. v.

²⁹¹ *Code Supplement of 1907*, pp. 1173-1193.

²⁹² *Code Supplement of 1907*, pp. 224-238.

²⁹³ *Code Supplement of 1907*, pp. 364, 365.

²⁹⁴ *Code Supplement of 1907*, pp. 388-393.

lation concerning internal improvements is also very extensive.²⁹⁵ The chapter on the militia is largely the work of the Thirtieth and Thirty-first General Assemblies,²⁹⁶ and the Governor is authorized to organize, when he deems necessary, a naval force which shall be known as the "naval militia."²⁹⁷ The sections relating to dipsomaniacs and inebriates are also more numerous than in the *Supplement of 1902*, providing more fully for the care of this unfortunate class.²⁹⁸ Chapter 10-A of Title XV, relating to warehousemen and warehouse receipts, is new also, having been passed by the Thirty-second General Assembly.²⁹⁹ Another of the more important new laws is the pure food law, which is found in part four.³⁰⁰ The annotations are very numerous in the procedural sections of the Code, especially in part three, which is the Code of Civil Practice.

The Code Supplement Supervising Committee made its report to the Thirty-third General Assembly. In this report it is shown that the total cost of the 1907 work amounted to \$33,466.96.³⁰¹

Various attempts have been made at two of the last sessions of the legislature (the Thirty-third and Thirty-fourth) to codify and revise certain phases of the law.³⁰² Governors Garst and Carroll have both urged revision of the school laws, and several bills have been introduced looking toward the rewriting of the laws on roads, taxation, and health. The law relative to the sale of the Code and session laws

²⁹⁵ *Code Supplement of 1907*, pp. 424-443.

²⁹⁶ *Code Supplement of 1907*, pp. 487-495.

²⁹⁷ *Code Supplement of 1907*, pp. 495, 496.

²⁹⁸ *Code Supplement of 1907*, pp. 502-509.

²⁹⁹ *Code Supplement of 1907*, pp. 786-796.

³⁰⁰ *Code Supplement of 1907*, pp. 1086-1092.

³⁰¹ *House Journal*, 1909, pp. 1307-1309.

³⁰² See *House Journal*, 1909, pp. 125, 188, 238. *Senate Journal*, 1909, pp. 164, 426.

was considerably amended by the Thirty-third General Assembly.³⁰³

In December, 1910, at the Good Roads Convention held in Des Moines resolutions were adopted asking a revision of the road laws.³⁰⁴ In 1911 the legislature passed various laws which were of importance to the student of Iowa jurisprudence. Two commissions were appointed to report to the Thirty-fifth General Assembly, on topics of special interest.³⁰⁵ Other important and interesting measures were proposed but failed of passage. One of these was a bill providing for the appointment of a committee to draft bills for the legislature³⁰⁶ and another was a concurrent resolution calling for the reprinting of the early Iowa codes and session laws.³⁰⁷ One of the most important laws of the Thirty-fourth General Assembly was the Uniform Bills of Lading Act.³⁰⁸

During the year 1912 suggestions of importance were made concerning changes and revisions in legislation. The Republican Party in its State platform declared for revision along certain lines,³⁰⁹ while the newspapers have strongly urged the adoption of new road and tax laws.³¹⁰

³⁰³ *House Journal*, 1909, pp. 26, 109.

³⁰⁴ Brindley's *History of Road Legislation in Iowa*, p. 245.

³⁰⁵ *Laws of Iowa*, 1911, Chs. 204 and 205, pp. 229-231. These were the Tax Commission and the Employer's Liability Commission.

³⁰⁶ *House Journal*, 1911, p. 1058.

³⁰⁷ *House Journal*, 1911, p. 1507.

³⁰⁸ *Laws of Iowa*, 1911, pp. 169-178.

The *Supplement of 1913* is in preparation at the time of the writing of this article. Governor Carroll, in his final message to the legislature declared for a revision of the tax and road laws (*Senate Journal*, 1913, pp. 39, 40, 47); and Governor Clarke made a strong plea for a reform in court procedure in his inaugural address (*Senate Journal*, 1913, pp. 90, 91).

On January 22, 1913, Senator Sullivan introduced a bill providing for the *Supplement of 1913* which was referred to the Committee on Printing. This bill, Senate File No. 38, was very similar to the bills providing for the two earlier supplements.—*Senate Journal*, 1913, p. 168.

³⁰⁹ *The Register and Leader* (Des Moines), Thursday, July 11, 1912.

³¹⁰ See *Applied History*, Vol. I, published in 1912 by The State Historical Society of Iowa.

Much important legislation was enacted by the Thirty-fifth General Assembly along various lines.

CONCLUSION

The *Code of 1897* is the last official code of the State of Iowa, and no private codes have been printed since it appeared. It has been kept up-to-date, both in the annotations and in the laws, by the publication of supplements.

Justice Horace E. Deemer admirably reviews the *Code of 1897* in the following paragraph:

The Code of 1897 is the first ambitious attempt made by the State at publication of a complete annotated code. That attempt has been remarkably successful, and in spite of the short time given for its publication it is singularly free from error or mistake. It has not been a profitable investment from a financial standpoint—the State not having recouped the expense of publication—but it has everywhere been regarded as nearly a perfect annotated code as it is possible to make.³¹¹

Very little remains to be said relative to the codes of Iowa law. From the *Old Blue Book* to the *Supplement of 1907* they have been of a very high order, with possibly one exception. Starting with the remarkable *Code of 1851* they have followed the logical arrangement found therein. The addition of annotations makes them doubly valuable as it gives to the reader the judicial interpretation placed on the acts of the legislature. The codes of Iowa will, in short, compare favorably with the codes of any of the leading Commonwealths of the United States.

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³¹¹ THE IOWA JOURNAL OF HISTORY AND POLITICS, Vol. I, p. 119.