REPORT

ON

CODIFICATION AND REVISION

OF THE

GENERAL LAWS,

MADE BY THE CODE COMMISSIONERS,

TO THE

EIGHTH GENERAL ASSEMBLY OF THE STATE OF IOWA.

DES MOINES, IOWA.
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REPORT

ON CODIFICATION AND REVISION OF THE GENERAL LAWS.

To the Eighth General Assembly
of the State of Iowa:

The Commission to whom the Seventh General Assembly of the State of Iowa, assigned the duty, among other things, to "revise and codify the laws of the State," herewith tender their report, thereon.

There occurred to us in the outset of this branch of the work, a question as to the extent of our duty—namely, whether, it intended a mere revision, such as would be met by a compilation and arrangement in proper order of the existing laws, without change, or a codification which would imply not only the former, but also a creation of new law, such as we might deem demanded by our conditions as a people. We concluded that the first, the mere revision, was intended.

And such a revision do we now present. We will give the reasons which led us to this conclusion. 1st. We were attendant during the last session when this branch of the work was discussed and expressed in the act defining our duty, and we well remember such to have been the accepted understanding of its intention. 2d. This conclusion comports with our view of the actual wants of the State.

To *codify the law*, is to state in a system, not only the law in force by statute, but also that announced in decisions, as well as that not yet so announced, but remaining thus far the grand fund of common law, out of which new decisions are daily made. Such codification would be very desirable, but is not to be attained without the painful labor of many minds working in concert for

many years. This was accomplished, as to part of the law under the inspiration of the great Napoleon, in the Code which bears his name, and which will live when Marengo and Austerlitz, are forgotten. The atttempt to *codify* all the law, is being seriously urged in England, and has been actually entered upon in New York by a commission appointed for the term of seven years. The systems called Codes, as of Tennessee, Alabama, Virginia, North Carolina, Iowa, &c., are not codifications, in the sense in which the word is here used, except to a very limited extent. These are *revisions* of the statute law, with a further announcement of a few provisions of general law which have heretofore been expressed only in decisions. Codification aims to leave no law unexpressed in statute, to the end that the law may be read and known of all men, and the expost facto result of judge-made law, may thus be averted.

There is a part of the law of every State, which is peculiar to such State. It may exist elsewhere, but has not, for that reason, been adopted—but, on the contrary, has been adopted, because, such State, elected to enact it as adapted to its condition. Such is called political, police, or administrative law. There is, also, much other law which is not enacted, but is appropriated, as the occasion arises, from that foundation of municipal justice, which we call the common law, and which has not been by such State expressly enacted. Our Code and its cognates, include only the former kind of law, with a few of the principles which have heretofore been of the other kind.

We think that this State is not ready for a codification of the former kind of law—its resources have not been yet sufficiently developed—its population has not yet become sufficiently compact. The wants met by such a kind of legislation are yet fluctuating, and though rapidly developing, they are yet, unfixed.

This assertion might be predicated, a priori, upon a knowledge of the uneven diffusion of our population, and upon its steady and rapid growth, and the assumption is verified by the modifications suggested and made at each session of the General Assembly. We think that as these men, who come biennially from each neighborhood in the State, yet fail in that kind of legislation, to make such laws as remain long acceptable to the whole, we, but three men, without remarkable opportunities of observation should more sig-

nally fail to recommend a system of this kind of law which would be wisely so adapted. The day for such a work will be when Iowa shall have much more fully expressed her legislative will in her statutes, and such statutes will form the basis of such a codification, which should be but their revision. It is true regarding such law as we are speaking of, that it should *grow*, or to speak less poetically, but more logically, it should be suggested by a well defined existing public want, and be exactly shaped to respond to it. To the codification of the other kind of law, the same objection does not obtain. For it is that kind of law which does not owe its fitness to the accidents of time and place, but rests on relations and rights, which are not qualified by the census, the population or depopulation of a State, or the rise or fall of a sovereignty. The objection to its codification is the enormous labor and time required, and the fact that it is being attempted by older and better qualified states, whose labors or experience may, in the future be a guide to us, in this comparatively untried field. Such reasons deterred us from embarking in the endeavor of codification.

Codification, in such department of law, to a limited extent, after the manner in which the same was very sparingly attempted in the Code of Iowa, of 1851, we deem not only practicable, but highly desirable. The subject of promissory notes, — bills of exchange,— bailment,— agency,— co-partnership,— insurance,— contracts,— landlord and tenant,— suretyship, — husband and wife,— infants,—guardian and ward,—administration,—guaranty, is such, as without extraordinary labor, might be codified. Such codification would consist in a statement in one statute of that law which is now only to be found scattered through the decisions reported in many thousand volumes. It would dispose of the evil of conflicting decisions — compact the law into portable and cheap, and easily obtainable shape, and avert the thousand evils of non-statute law.

But, we have not attempted even this kind of codification, because, had we deemed our powers sufficiently ample, our time has been all occupied, either in, imperative private affairs, or in the preparation of the reports presented.

The method of arrangement chosen in this revision, is not the alphabetical one, which might have been chosen, had no method been imposed by the Code of 1851; but that method is so good, and so well understood, that a change would neither be sustained

by reason, nor by the approval of the people. The method or classification of the Code has very illustrious prototypes, and among the States there are several Codes which use the same method as for example, those of Virginia, Alabama, Delaware, etc

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

The old sections of the Code, and of the subsequent acts, are intended to be indicated by the old numbers, and the whole work is intended to be sectioned from one upwards, after the manner of the Code of 1851. Whether it is all the law depends upon the fidelity of the revision, and any one disputing its rectitude, in any instance, may go for himself in that instance to the sources whence it is drawn, and may also obtain the decision of the courts thereon.

Any revision making changes, even of words, and so needing to be enacted, would also need to be printed, and would take a very long session to get itself enacted by so slow paced a body as a legislature; and so it has occurred, that this kind of revision is a very frequent and popular one. Sometimes such revision has been made purely as a private enterprize, and at other times under the direction of the State, in which latter case, the work of revision has been committed to one or more men, and then approved by a simple order that it be published, or otherwise.—Among such revisions are those of Florida, Georgia, California, New Hampshire, 1853,—Connecticut, 1854,—Arkansas, 1858,—Minnesota, 1859,—Michigan, 1857,—Illinois, etc.

If verbal charges are needed in the laws included in this revision, they are not worth the expense which would attend the making of them in the revision. If these are to be made, let them be all stated in one amendatory act, and after its passage, incorporated into the proper place in the revision. A necessary amendment or two will be suggested by us.

But the truth is, taking the Code of 1851, as a basis of law and

classification, it is much more easy and cheap to provide a fair revision, than if nothing had been done by the State towards methodizing its laws. We would recommend that the laws of this Session be also incorporated with the revision, as soon as the same shall adjourn, and that such completed revision, containing all the laws of Iowa, shall be ordered to be printed and bound in one volume.

The delivery of the revision has been delayed by necessary attention to other parts of our field of labor, but it will be presented within a few days.

WM. SMYTH,
WINSLOW T. BARKER,
CHARLES BEN DARWIN,

NOTE.—This revision has been done by Mr. Darwin, and we, his colleagues, recommend that, in view of his superior acquaintance with it, the State provide that he incorporate into it the laws of this Session, and make full index and marginal notes thereto, and superintend the publication of the book.

WM. SMYTH,
WINSLOW T. BARKER.

DES MOINES, IOWA, Feb. 11. 1860.