

## The Code of 1851

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# ANNALS OF IOWA.

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## EDITORIAL DEPARTMENT.

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### THE CODE OF 1851.

The interesting article on the life and services of Judge Wm. G. Woodward, contributed to the foregoing pages by Judge W. F. Brannan, recalls again the noteworthy work of Iowa's first Code Commission appointed by the first General Assembly, in 1848, whose report in 1850 became the Code of 1851. When Iowa became a State the people had a miscellany of laws, an accumulation of ill-assorted, over-lapping and redundant acts that had been added to the acts first adopted, namely, those in force in the old territory of Wisconsin. The forms of procedure had been brought from the older Eastern States and were a mixture of Southern and Northern court practices, altogether a system that was cumbersome and expensive. Moved, doubtless, both by the latter considerations and by the agitation for codification, led, at that time, by David Dudley Field of New York, Iowa was almost the pioneer in codification. The legislature gave the commission power "to draft, revise and prepare a code of laws" and most thoroughly and vigorously did they execute their important task. The laws were re-written and re-organized, being condensed, clarified and classified under logical categories. Judge Emlin McClain, now a member of our Supreme Court, and for many years a distinguished publicist and himself the author of an annotated code, has said that "the Code of 1851 is a model of plain and unambiguous statement, in direct and clear language, of the rules and legal propositions which are attempted to be laid down. So satisfactory has been the work done, that while these sections have been overlaid by subsequent legislation, they have been largely retained in the Revision of 1860, the Code of 1873 and the Code of 1897 as the best statement of that portion of the law which they are intended to cover."

The Commission not only applied the knife vigorously in

reducing the verbiage of the early statutes and gave it lucid and logical form, but they introduced a number of radical reforms. They swept aside the elaborate modes of procedure reported from the older states and secured simplicity in process in ordinary civil actions and in criminal proceedings. In the conduct of government, outside the province of the courts, they provided, at least the Code as adopted so provided, for some revolutionary changes in methods of administration. The two reforms that eventually aroused great public discussion were the establishment of the County Judge system and the new methods of taxation and financial administration in the collection and distribution of taxes. In both instances the conspicuous fact was the marked increase in centralized authority at the expense of the autonomy of minor political units.

Prof. H. M. Bowman, of Amherst College, declares that the Code of 1851 is "justly famous." But he states that "its chief title to fame lies in the fact that it marked the abandonment of the common law." We doubt if this assertion is warranted. The Commission compiled, restated and enacted in fine form the administrative law of the State and local governments, and it codified the forms and methods of procedure in civil and criminal actions. But their Code did not mark the abandonment of the common law in Iowa. What it did mark was the discontinuance of the common law procedure in civil actions. The common law prevails in Iowa today in so far as its rules or principles are not inconsistent with or have not been superseded by statutory provisions. The Commissioners of 1848 did not attempt to produce a code that should assemble and include all of the general principles of law governing man in his relations to property and his fellows, a consummation hoped for by David Dudley Field and our own Judge John F. Dillon.

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#### ROBERT LUCAS—THE MAN.

The discovery of the journals of Robert Lucas, reviewed at length elsewhere, has given us much new light upon the character of our first Governor, light that reveals a finer type

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