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Codification of the law in the Commonwealth of Iowa

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Notes on the History of the Codification of Law in Iowa

by

Theodore Anderson
Preface.

The subject of this monograph was suggested to me by Dr. Benjamin F. Shambaugh of the University of Iowa in 1899 as a subject for a thesis for my master's degree at the University of Iowa. The citations, references, and annotations were added afterwards to show from whence the statements of the text were taken and as a possible guide for anyone wishing a short outline on codified law. No material change was made in the text.

In general, there exists no special material upon this subject. The only assistance consists of two code commissioners' reports ('75 and '96) outside of the various codes and compilations. Newspapers are not always to be relied upon for even current events, hence, they could not be used.

The general method of treatment of the codified law of the code of '75 has been chosen as the guide in almost all criticisms, because it is a fairly good outline of the "natural method" in codified Law.

Iowa City, May 29, 1900.
INTRODUCTION.

Codification is the formal reduction of the scattered laws of a state into one body of vital law by legislative authority.

It will be noticed that the word "state" is used in preference to "political community" as some writers would have done.

The reduction of the rules and maxims of equity, the common law and the statute law into one body of law is codification, and the resulting body of law is a code. In the United States it is considered the reduction of the common law, with its various exceptions, additions, and modifications as expounded by the judges of the numerous courts of last resort, together with the statutes modifying the common law passed by the various state legislatures.

In general, the idea of codification held in the United States, is the one now recognized by all English speaking peoples. Consequently it is not the intention of the true codifier to do away with the law as it now stands and establish a new system in the place of the known law, but rather, to do away with the useless, obsolete, and obnoxious matter of the common law; at the same time uniting, reconciling and correcting the existing common law (case-law) as it is now found in more than 8200 volumes of reports, to which are to be added the reconstructed, conflicting and obscure statutes of the legislators.

19 A.L.J. 192, 193; 20 Am.L.Rev. 1, 2. (Also the pros and cons from 1 to 47 of the same volume); 5 Am.L.R. 1.
By uniting these corrected, amended, reconciled and consolidated principles into one body of law, containing only the elements of common law and of the statute law would give us a code, a code complete in all its parts. A code may then be defined as a body of positive vital law established by legislative authority of a state.

20 Am.L.R.315; also 331. Compare Clarke on "Science of Law and Lawmaking" pp.10,72,97. This work no doubt is the most exhaustive comparison between common law and code law now in print.

To elucidate the foregoing ideas, the following extract is made from 20 Am.L.Rev.45 in which that celebrated jurist Ex-Chief Justice Dillon of Iowa says; "A code according to my conception differs from mere reversion, consolidation or digest of existing statutes in that it shall derive the elements of its chief value from the existing body of case (common) law and statute law, removing therefrom what is obsolete, needless, technical, inconsistent or superfluous settling obscure and doubtful points; expressing well settled principles of general interest or utility, and with a cautious hand filling up the interstices which the irregular development of law, as a result of the exigencies of litigation, has shown to exist, and then arranging the whole in a definite and systematic form". 'This kind of codification is reasonable and practicable as well as desirable'.

Such a view of codification, as above given by this learned jurist, does not necessarily decrease the value of our present reports but rather assists us in knowing, feeling and realizing the vital principles of the law under which we live. A code, according to some objections to codification answered in 24 Am.L.R.255; also in 25 id.515.

This idea, would not be a body of law dealing with every conceivable emergency in which a person may be placed during life's journey, but rather the elements of law on any subject that may be codified.

21 Am.L.R.300, 308.
Can it be doubted that such a code would be beneficial and practicable?

See also 11 Am.Bar Ass'n 219 for a paper showing the retarding effects of uncodified law. Compare also Clarke "Law and Lawmaking" pp. 334, 341, 304, 40, 100, 101, 337, also 247 and 298. Even a slight examination of Clarke will reveal a bias in favor of case law which was hard for him to overcome.

See the discussion on codification in Vol.9 Am.Bar Ass'n, pp. 11-75.

Would such a work become a failure because it would lay bare the weaknesses and defects of our present system of law? "Surely", says the codifier, "the fact that it shows us weak points in the present system of law is sufficient reason to cause us to codify our laws from time to time, for codification will remove errors and tend to complete the law." It may be further claimed that such a work would be upheld by all citizens as being just, right and equitable, and more likely to advance the cause of civilization than our present system of drawing our knowledge of the law from more than 8200 volumes of reports which contain the law, the evidence of the law, the facts in controversy, the misleading dicta of the careless judges, to say nothing of the strange briefs of some of the councillors.

12 West.Review, 430; 2 P.S. Q. 91-134; 3, id. 136.

It may be also noted that equity and the common law are constantly being reduced into statute law. This reduction of the law is the natural outgrowth of society. Therefore we should codify the Clarke "Law and Lawmaking" pp. 70, 90 says, 'law is a natural growth'. Compare this idea to the one given on codification in this paper.

statute law continuously in order to avoid a confusion in the single statutes like the single instances in the common law, and if this were done, would a code be more or less misleading than tens of
thousands of cases? Or the code rules any more inflexible than the same rules of the common law found in the thousands of cases scattered over a period of a thousand years more saturated, interwoven and intermingled with the practise and usages and ideas of the age of canoes than of ocean-liners; of battle axes and arrows than by rifles and cannon; of wooden spades than by the steam shovels; of the skulking King's messengers than with the wireless telegraph?

Perhaps, the greatest argument advanced in favor of codification is; "It will make the law knowable".

29 Alb. L.J. p. 127 and 267; also Codification in New York, R.L. Fowler, and compare these statements to Austin on Province of Jurisprudence par. 935, see also code of '97 in this monograph.

It is really remarkable how long this argument has stood the test of this questioning age. If the layman would consider any half dozen laws of any legislature that ever met in his state, he would soon see that he could not know the law, and perhaps, he would also question if the legislators knew in each case just what had been enacted as law of the land by them.

One only needs to recall how the men who assisted in passing a certain law in Congress, popularly known as the "Crime of '73", repudiated all knowledge of the consequences of their acts in order to be fully convinced that all law is not knowable because it is placed in statute form or into a code.

On the other hand, those who oppose this work, consider it as an impossible task because it is impossible to state in a codified form the common law, its exceptions and modifications, in as clear and concise language as it now exists.


It is also claimed that codification would not remove the necessity
for our reports, therefore, we should not codify. In the minds of many learned jurists, the last two reasons carry great weight with them. There is also another reason often advocated with much force -- to wit -- no man, or set of men, know the law well enough to codify it and retain the meaning now given to the words and phrases of the law. Also, that legislatures through their ignorance of the law often set the whole state on edge by attempting to do this work. Beyond a doubt, legislatures often attempt more than they can handle, but this objection should not be taken too seriously, because men may be employed to codify the law for the legislators who are able

As has occurred in Iowa in 1851, 1873, 1896. See especially the Code Com. Reports of '73 and '96 and compare the same to codes of '73 and '97. See also the History of the Code of Justinian.

and competent, thereby avoiding this difficulty.

The last reason is another form of the first. A great deal of the trouble and doubt in our law is caused by the differences placed in the meaning of the words used. The language of a progressive nation must necessarily be growing and shifting with the nation's advancement. With this change in the meaning of words and phrases comes the natural "reading in" into the language (passed upon many years before) a new meaning never thought of by the legislators. Unknown emergencies of life which are brought into court to be adjudicated for the first time, cause the various judges to interpret the laws and facts in controversy as they see them, clothed in old forms yet in a new dress. Therefore, it naturally follows that exceptions may be as readily read into the codes as into the common law; or that the law may be interpreted under the code to be as flexible as in the common law.

See the celebrated case of Ashford v. Thornton 1 Barnwell and Alderson 405 (1818). In this case there appear at least four
great legal minds, contending over what is the law of England in a certain case. Lord Ellenborough, presiding, Abbott (Lord Tenterden) one of his associates, Chitty for the plaintiff, Tindal, afterwards Chief-Justice of the common Pleas, for the defendant. Each man contending for his views, backed either by precedent or by civilization's precedent, that his view of the controversy was the law of the land. Each one turned back into history over six hundred years, turned back modern progress, civilization, justice, the human race itself, six long, weary centuries to an almost forgotten brutal and supertitious law which had never been repealed. The presiding Judge in passing upon the law said, (460) "The general law of the land is in favour of wager by battle, and it is our duty to pronounce the law as it is, and not as we may wish it to be". This, no doubt, is an extreme case, yet, it is one which shows how long unrepealed "moss-backed" law may hang about the eyes of justice and obscure her vision. See also Carpenter's appeal, 22 L.R.A. 145, 148; Shellenberger v. Ramson 31 Neb. 81 and the same case in 41 Neb. 631; Aiken v. Kellogg 119 N.Y. 441. These cases are said to show the weakness of codes and how unjust may be the results under "code law". Compare all the above in the light of Hiller v. Salomons 7 Ech. 476.

It may not be out of place to observe that, if the common law is a model of perfection, flexible, suitable and satisfactory in every detail, why the thousands of statutes required to rectify such inequalities, as the rights of married women, the rights of redemption, the survival of the right of actions in torts, and the like? Or can it be said that these "inequalities", so-called, are only the products of our advanced civilization? and the common law is just and equitable?

If codification is thoroughly considered, one must answer the question, 'Is not a code a digest of law'?

A digest is an orderly compilation of the law under leading subject heads, and such a compilation is seldom done by legislative authority. In fact, digests have nearly always been compiled by private persons, - digests serve as secondary evidence of the law or as mere manuals of reference of it. Therefore, digests are not codes. Yet, they might be considered as embryonic codes.

126 Ed.R. 363. Compare the Digests of Justinian to the modern digest. Are they alike? Which is the better "law"?
We are also asked, "Is not a statute a code"? Yes, it is. But the usual view is that a code is a complete body of law on some special branch of the law or on the entire law, while a statute is generally limited to a certain line of action. However, they may be considered one and the same.

Lastly, is a written constitution a code? A constitution might be so considered, but it is not the object nor purpose of this monograph to so consider a constitution.

If a body of law is compiled by a private person, is this a code? No! A private person lacks the legal right to amend, change, modify, and consolidate the law - the very essence of law making. Such a work, by a private person, must be considered as a compilation of the law, for the individual lacks the legislative authority to abolish, repeal, etc., in order to make a lawful code. Therefore, all so called private codes are mere compilations of the law and should not be dignified with the name of a code. It would be just as sensible to denote such works as Blackstone's or Kent's as codes as to concede the name to private compilers' work. If a private person has authority to codify the laws of a state, this necessarily means legislation; if it is not legislation then it is not codification but compilation. What would be the effect upon a state if a private person could make a code? It would give to a private individual absolute power to make, to amend, or even to refuse the entire work. Such a grant of power to an individual would be fatal to the government of a state because its right to exercise sovereignty would have been placed into the hands of an individual. Hence, the deduction that all so called private codes are not codes but compilations and deserve no other recognition.

It may not be out of place to notice at this point that codes
are subject to a natural growth the same as any other laws. Even
the short historical sketch here given proves this fact.

See the next two pages and also compare the code of '51 with
'97 of Iowa. See also a short comparison in Bouvier Dict'y on"Codes".

Remembering the controversy over codification, one naturally
asks: Are codes new inventions in the realm of law? To answer
this question one could write a thesis upon this subject and not
exhaust it. However, for our purpose, it may be said that a code as
already defined, is a modern idea of law and usually it relates to
special subjects, e.g. Civil Procedure, Criminal Procedure, Negotiable
Instruments and the like.

(z) 19 Cent. 591; See in this paper Davis Criminal Code of Iowa;
54 Alb.L.Jour. 356 is especially good on code procedure.
(x) Johnson v. Harrison 47 Minnrs 575, 578.

Many of the ancient codes (so called) were of private origin
and very elementary in their scope.

The Ten Commandments were both ethical and legal in tone.
They are not of such a nature as to be considered a code of law, but
rather, statutes of morals and law given by the leader and dictator,
Moses, to the wandering children of Israel.

Other similar compilations of ancient times are: The laws of
Solon, the laws of Lycurgus, and the laws of Draco, as well as the
Twelve Tables of Rome. Theodosius promulgated his code in 438.
It was a digest of the law for the last seven hundred years. The

Contra Mackenzie Roman Law p. 19-20; 126 Ed.R. 347. In Green
Bag 10-309 is a good short history of this code.

first great work on codification is the code of Emperor Justinian
which appeared about 533. This code together with the Digests,
Institutes and Novels may be considered the greatest work ever pro-
duced before the era of printing. It was the work of eminent law-
yers of the time of Justinian. This code was sanctioned by the Em-
peror as the law of his realm and it has served as a model and a
storehouse of law ever since its publication. Especially is this
true in those countries where the Civil (Roman) Law is still recog-
nized.

See Vol.9, page 89 et seq. Am. Bar Ass'n for "Natural Evolution
of Law".

Almost endless criticisms are to be found on codes vs. common
law and nearly all common law critics sooner or later compare the
Roman law to the common law, singing the praises of the Roman law as
'a real science', 'a perfection of mind over chaos'; while the Roman
law's enemies see in it only 'a vast mass of unshapely lumber' in
the legal world. Strange, is it not, that nearly all the critics

See Maine's Ancient Law; Pollock and Maitland on History of
English Law; Sandar's Justinian by Hammond; Gibbon's History
(ch. 44); Hadley Introduction to Roman Law; Mackenzie's Roman
Law and its relation to Laws of England and America; Hunter's
Roman Law and Morey's Roman Law.

forgot that the sources of the law of all kinds from which the laws
of Justinian came numbered over 2000 volumes, covering a period of a
thousand years. How much must have been changed, reconciled, con-
solidated and harmonized, three million lines reduced to one hundred
and fifty thousand. But let it be ever remembered, the Roman law
was a growth, pruned, modified, amended, systematized, evolved out of
the experiences and needs of the past centuries by the emperors
and the great lawyers. And further, that the codifiers of Justinian
amended, added to, eliminated from and consolidated the whole accord-
ing to their own ideas of the law. They were not bound by any
laws in their work. Some of the changes were as radical as any
suggested by Bentham for the common law some seventy five years ago.
They collected the opinions of the emperors and 39 great lawyers or
writers on law, welded these authorities into the great Roman law
known to us as Justinian's Code, Digest, Institutes and Novels.
This work was really a new creation out of but independent of the
works of the past law givers, law writers and compilers. In some subjects Justinian's laws may be considered a growth, in others most certainly an arbitrarily established law. One cannot refrain from remarking that, however conflicting may be the ideas of men as to the merits of the laws of Justinian, he can say of it what Napoleon said of his own code, "I will go down to posterity with my code in my hand".

The great work of modern civil law is the Code of Napoleon, consisting of thirty six laws. An admirable work in the eyes of its friends and a most misleading instrument in the eyes of its enemies.

126 Ed. Rev. 347 for an outline of growth of codes to Code Napoleon; Rodman's Commercial Code of France; 20 N. Am. R. 393; Clarke "Law and Law making" 180.

In England, there has never been a complete code. In early English Law may be found a number of attempts at codification but only one of any special value under Athelbert, King of Kentings, a contemporary of Justinian. This compilation of Athelbert contains only ninety sentences. Alfred reissued the previous compilations or codes, prefacing his code by a free translation of the Mosaic law and making several new additions to the law. From that day to this no general code has ever been enacted in England. However, we find

See 7 Green Bag 56 for a comparison of common law and civil law; that is, English and French systems.

codes on special subjects - e.g. Bills and Notes, Judicature Acts, Code of India.

It may not be without interest to know that in modern continental Europe "All the nations have codified their laws, and none of them show any signs of repenting it. On the contrary most of them are now engaged in remodeling and amplifying their existing codes."
In the United States many states have compiled, revised or consolidated
their statutes and laws, but few have codified them. About thirty
states have more or less complete codes. Among the states having
a codified law is Iowa.

Before considering the codes of Iowa, a passing remark upon
classification of law is in order. In every age attempts have
been made to classify the law of the land.

How is law to be classified? Is it divisible into definite
parts or divisions? This mooted question of classification has
received many answers by various authors on law and by the legis-
ators through their acts of codification.

Each writer seems to present strong points for his position and
it would be a task of great interest to examine these views if that
work were within the scope of our outline, but the law as codified
in Iowa is the work before us.

As has been shown in the foregoing pages, codified law has had
a varied history, and a slow growth—especially from Justinian's
time to that of Napoleon. Many codes have come and gone, carrying
with them as many divisions, Codes of Probate, Civil Procedure, Penal,
Justice, Private, Public, Negotiable Paper, Commerce are common divisions
found.

In the special case of Iowa there are four divisions:— Public
Law, Private Law, Civil Practice, Criminal Law and Procedure. These
divisions are to a certain extent arbitrary as well as logical.

Public Law relates to the state, its duties, divisions, officers,
powers and rights.

Private law relates to the individual, his property, his rights and powers.

Civil Practice relates to offenses, not criminal, against Society.
Criminal Procedure relates to criminal offenses and the manner and methods of trying criminal offenses as well as to the punishment for adjudicated offenses.

Holland on Juris. 309, 10.

Bearing this classification of codified law in mind, we are ready to consider the so-called codes of Iowa.

In considering the law of Iowa, it must be borne in mind that the common law and its exceptions have never been codified together with the statutes. The only modifications given to the common law are such as the demands of civilization have called forth into statutes which embrace the common law, if there were any to be changed. Therefore, let it be remembered that the codified law of Iowa is the statute law only, and "the codes" are only consolidated bodies of statute law. Thus far in Iowa's history no attempt has been made to codify the common law, nor have many of the decisions of the Supreme Court been reduced to code form.

Compare this statement to the Report of Commissioners of '73 and '96 on revision of the laws of Iowa.

LAWS OF THE TERRITORY OF IOWA.

Iowa was organized into a territory in 1838. The first territorial legislature met at Burlington in 1838 and began by enacting laws that would repeal the laws enacted by the territory of Wisconsin, from under whose rule Iowa had just been removed by Congress. These acts were united in 1842-3 into the Revised Laws or "Blue Book". This was Iowa's first step towards a knowable and systematic law. Another step would lead to codification. Whether this was a wise
move, will not be discussed in this paper, but rather, it will be observed what changes have taken place in the arrangement of the law, and in a few instances, observations will be made on particular laws by way of comparison of it after it has been revised, compiled, or codified. In a few cases, peculiar statutes or interpretations of statutes have been observed by way of general illustration.

A committee consisting of Springer Crawford, Carlton Cook, and Mason were selected to compile the laws of the territory. The result

It is with great pleasure that I here incorporate Mr. Parvin's letter. It speaks for itself. The letter gives a list of names unlike the one obtained from the newspapers of that early day. I cannot refrain from calling the reader's attention to some of the difficulties mentioned in Mr. Parvin's letter as to the work and accuracy of the work of Iowa codification.

Cedar Rapids, May 12th, 1900.

Theo. Anderson,
Law Department,
Iowa City, Iowa.

My dear Sir and Friend:

After considerably more than an hour's search, I have succeeded in getting the information you sought. It was not at all where it should have been. The laws and joint resolutions of the sessions of 1841, 1842 and 1843 are silent. The Appropriation Bills do not even give the names for extra pay and it was only by a diligent search through the Journals of the House and of the Council that I found the items sought for. The indexes of those bodies are fearfully deficient but at last I found that the House had passed a resolution asking concurrence of the Council and had appointed the following members on the Committee of Revision: - Chairman Thos. McKillen of Henry, Andros, Felkner, Hackleman, Lewis, Newell, Robertson, and Walworth. The Committee on the part of the Council were Chairman Las. B. Teas, Jefferson, Cristie, and Wallace, W. H.

I remain,

Very truly yours,

T. S. Parvin.

of their labor was issued by the legislature in the form of the Revised Laws '42-'3 or "Blue Book". This work was performed by the committee during a three months session of the legislature which they also attended regularly. As might be expected under the conditions, the "Blue Book" shows lack of a systematic revision that
results from clear and cool reasoning in the room of the student and the thinker, for it was compiled in the midst of turmoil and debate. The Revision of '42-3 contains one hundred and sixty-two chapters, alphabetically arranged. That is to say, beginning with the subject or class division of the law of "Abatement" and ending with "Wills".

This method of classifying the law is still in vogue in some of the states. See Hurd's Illinois Statutes, 1899.

The law of Iowa might have been divided roughly into public law, things real, things personal, actions, criminal and civil, but no such division was attempted. Even if the arrangement was scientific, the work in this arrangement was crude and layman-like. It is not the work of great lawyers or jurists. For example, there are ten separate chapters on the courts. If this work were a code even of the statute law, this would not occur. Therefore, the "Blue Book" is a collection of statutes and not a code. Yet it must be borne in mind that the whole of the "Blue Book" received legislative sanction. According to this sanction it should have come out a code, but this was not true. It was only a "Revision" or compilation of laws into one book which were in many cases incorporated without any change in the language. It was of some practical importance to the people of Iowa by giving all the statute law in one volume.

General Observations on the "Blue Book".

It is almost impossible to sum up this first complete edition of Iowa Law. One must tear each chapter apart and criticise it and not the law by divisions. For example, in chapter 66 you learn "That all gifts of land ... for erection of school houses, divine worship and burying the dead", receives the common title "Education". Attorneys are admitted to the bar without even a year's residence, to
say less of any study of the law. Adultery is made a fine of $200 Ch.15 of Blue Book.

and not to exceed 30 days in county jail while the code of '51 made Ch.49, Secondary Crimes, sec. 21.

it 3 years, as the maximum limit with a fine of $500. Imprisonment for debt was abolished by the law of Feb. 8, 1843, chapter 63.

The ward heeler in reading the easy laws of Ch. 68 on Elections no doubt now sighs for the return of such laws instead of the improved Australian ballot of today. Insane persons received very small consideration at the hands of the state. In fact, none at all. The chapter on "Immoral Practices" gives some strange ideas on Ch. 79, Sec. 26-29 of Revised Laws of '42-3, also see Prof. Ensign's excellent article on Iowa Insane Asylums in "quarreling, fishing, shooting", being punishable by a fine "in any sum not exceeding five years". It also relates to swearing near "religious assemblage" and working on Sunday. Swearing was put Ch. 82 of Blue Book.

down in such cases at twenty-five cents to one dollar for each offense. Colored people could not acquire the right to settle in Iowa according to the Poor laws of the territory. These are some Ch. 118, Sec. 2 "Blue Book".

of the laws then useful to be found in the "Blue Book". The Blue Book was the Revised Laws of '42-3, and so called from the color of the covers of the book.
CODE OF '51.

On January 25th, 1848, the extra session of the First General Assembly passed the following act: To provide for appointing of commissioners to draft, revise and arrange a code of laws.

Section I. "Be it enacted by the General Assembly of Iowa: That Charles Mason of Des Moines County, William G. Woodward of Muscatine County and Stephen Hanspstead of Dubuque County be and are hereby appointed commissioners to draft, revise and prepare a code of laws for the state of Iowa."

Section II. "Said commissioners shall prepare a complete and perfect code of laws as nearly as may be of a general nature only and furnish a complete index to the same when completed." About three years after this act was passed, the code of '51 went into effect.

This code is the mature product of calm and collected minds. It is the fundamental code of Iowa, produced by men learned and experienced in the law. It is the basis of every succeeding code. Therefore it will be considered at some length, in order to study some of the differences between codification, revision, and compilation of the statute law of state.

The code of '51 is divided into four parts, to-wit:

Part I. Relates to the state's sovereignty, its officers, general assembly and the statutes of the state. This part contains fifteen titles or sub-parts and seventy-four chapters.

Part II. Relates to rights of persons and contains two titles and fourteen chapters.

Part III. Relates to courts and procedure therein, and contains three titles and forty-six chapters.

Part IV. Relates to crime and punishments and proceedings in criminal cases, and contains three titles and seventy-two chapters.
Part One of the code of '51 relates to "the state, its divisions, officers and police, the general assembly and the statutes". This heading is nothing more or less than an extended statement of the words: Public Law, as above defined.

Chapter I of title I deals with the sovereignty and jurisdiction of the state. This law does not appear in the Revised Laws of '42 because Iowa was not a state at that time.

Chapter II treats of the election, organization, sessions of General Assembly and the freedom of speech, compensation of members of the assembly; also the law of contempt of both houses, and the punishment for the same, together with the provision that such person may also be prosecuted civilly and criminally. While the revised laws of '42 contain four chapters on the same subject with no provision for civil or criminal punishment for contempt.

Chapter III deals with the authentication and the construction of statutes and when they go into effect. Chapter IV gives the general law of 'Repeal of Acts'. In the "Blue Book" we have two chapters devoted to construction, authentication and 'Repeal of Statutes'. Under the "Blue Book" every act must contain a provision relating to the time it is to go into operation. This made the law unknowable because many of the laws went into effect immediately, or upon single publication in a newspaper selected by General Assembly. Hence, no time was allowed for the dissemination of the law, and even if one were desirous to know and to obey the law, he must often fail from lack of evidence of the law. This error was partially avoided by the code of '51, by making it necessary for a certain length of time to elapse before the statute was to take effect after publication.

Code '51 Ch.3, sec.20 to 25. Compare with Code '97, sec.26, p.86, also Scott vs. Clark, 1 Ia.70, Calkins vs. State, 1 G.Gr. 68, and constitution of 1846, Art.3, sec.27.
The foregoing statement is a brief analysis of the first title of code of '51, and gives a fair idea of what is to be found in a title of this book.

If we now select certain titles and chapters, we will as well understand the question of codification as if each and every chapter were examined in detail.

Chapter 15 of title III is headed "County Judge". No such dignitary is found in the "Blue Book". It is a new office in the government of Iowa, created by the code of '51. This officer was assigned the duties of Probate Judge, county commissioner, and such additional duties as the General Assembly may add from time to time.

Some idea of the necessity for codification may be drawn by a study of the duties of this officer.

He is to act as Probate Judge. Therefore, he must know all the statutes, and all the decisions of the Supreme Court of Iowa relating to these statutes in order to understand the duties and powers of Probate Judge. He must also consult the statutes and decisions relating to county commissioners in order to know his county duties and powers. In short, this man is to be a Soloman of wisdom and a tower of strength physically. For he is to be keeper of county seal; the accounting agent, and general agent of the county, having care and management of all county property not in other county officers' charge; to audit accounts, to draw warrants on the treasurer, to audit and settle the treasurer's accounts, to audit and settle the collector's accounts for the county revenue, to keep a record, term by term, of the county treasurer's acts; to keep a minute book relating to his orders and decisions on roads and probate matter; money orders drawn and to whom drawn; to sue and be sued for the county's benefit; to look after all fiscal affairs of the county for its best good; to make a posted report of
receipts and expenditures of county funds in January and July of each year; to provide room, books and other requirements for the other county officers; to sign deeds for county lands and a multitude of minor duties, to say nothing of his duties as county judge in the county, to wit: erection and repair of county court house, jail and other buildings; look after the roads, ferries, the poor and illegitimate children; determine the amount of county tax levy, attend to judgments in his courts (may have trial by jury); keep a record of his acts, and then during his leisure hours act as probate judge.

Code of '51, sec. 808 does not allow the colored people a chance to settle and the county judge must decide the question of color as it comes under the poor law of Iowa.

Knowing what kind of men are often elected to county offices, one cannot but ask, how many laws have been passed in Iowa relating to county commissioner (now called board of supervisors) and how many decisions were needed to interpret these laws? And how many men elected to the office of supervisor know these laws and how to enforce them?

No less than two hundred and seventy-seven laws on seventy-five or more subjects, mentioning the duties of county supervisors have been passed. Many have been repealed or modified by legislature or Supreme Court. But what laws are in force? If the laws are not codified from time to time, who will be able to tell in 1899 what laws of '39 now affect him, is the question asked by the codifier.

There have been in the past sixty years over fifteen county regulations relating to bridges; eight relating to swamp land, and twelve to roads in general. How is the layman to know what is law and what is not law when he assumes the office of supervisor if he is to search the deluge of legal acts for the last sixty years? As well as the one hundred and ten Iowa Reports containing the decisions
of last resort on this matter?

But to return to the County Judge, can any one doubt that the office of County Judge was a marvel of power, and perfection? He was made the scapegoat for every kind of work not necessarily placed upon some other county officer. Why and how such a blunder was ever made is hard to conceive. A man with the power to enact county regulations and to interpret them, to collect revenue, and to expend it, to locate and grade roads, is, in a limited way, a despot.

Sec. 106 sub. 10, code '51.

Why the codifiers forgot the system of checks and balances, and separations of powers so completely in this office is a fact not readily explained. No wonder this office was divided by the 8th G.A. ch. 46, into County Judge and County Commissioners.

Revision of '60 on County Judge.

Title V relating to the state library might have been made a part of the title on education. This would have been logical and rational classification. It would seem that an error was committed when the title on "Towns and Villages" relating to the incorporation of the same was placed after "Census and Militia". Towns and villages belong in the list of "Divisions of the State" and should have been made a part of Title 3 either as a chapter alone or as a part of the chapter on counties. Towns and villages are logically a part of the state's divisions and should not be otherwise treated.


Some excuse might be found to treat counties, townships and cities in one chapter (had it so occurred in the C. '51) because of the
limited number of inhabitants of the state. While to-day's law demands separate treatment of these subjects because of the increased population and the consequent complexity of the intercourse and relationship of society with the government of the state. Thus, under the Code of '51 we have the first step toward uniform incorporation laws for our cities and towns, a provision not found in the Blue Book. Following the title on city and towns just suggested, should Ch.42, C.'51.

be the one on elections. It in turn followed by "Revenue"; "Roads and Highways"; "Corporations"; "Internal Improvements"; "Militia"; "Police"; and "Education". This arrangement to a certain extent is arbitrary; yet it is based upon the general importance of each public function to the individual as found in a free government.

It will be noticed that title 13 (regulations pertaining to Sections 937-1010. Compare this to Code of '97. trade) has been omitted. Omitted because it is private law in its nature and not public and should be so classified. A new heading would also be suggested, e.g., "Commercial Intercourse", or "Trade and Commerce".

Among the most important changes in the public law of Iowa by the Code of '51 relates to corporations. Every citizen of Iowa must have welcomed the uniform enabling Act for corporations in general. Under the Blue Book, a special act of the legislature was required to incorporate every corporation, whether for profit or not for profit. This naturally consumed much valuable time. Besides, Ch.128 Blue Book and chapter 13 of the Laws of '43 will show how this was done under the old laws. Pile vs. Eateman, 1 Iowa, 369.

the laws under which corporations were organized were not uniform or similar in nature. The result was that the general legal relations Many illustrations could be given to show that this statement is true, but it is not considered necessary when attention is
called to the fact that every hoped-to-be-company would use the "lobby for all its worth" and assist in electing 'members of legislature with the future' in view.

between the individual and the corporation were not easily known. This is now changed by the 'Uniform Enabling Acts'. Also a provision is made that a corporation failing to comply with the Enabling Act, thereby makes the property of all stockholders individually liable for the corporation's debts. Certainly a strong inducement

Chap.45, sec.689. This was modified by 7th G.A. Ch.35, page 110 so as not to apply to R.R.Co.

to cause the corporators to comply with the law.

The title on Education is in a state of legal chaos. Instead of the following order of chapters, State University, School Land and Funds, Superintendent of Public Instruction, School Fund Commissioner, School Districts, Election of Officers, Miscellaneous matter, Normal School, and the Deaf, Dumb and Blind, we would suggest; Superintendent of Public Instruction, State University, Normal Schools, The Deaf, Dumb and Blind, and Common School System. This arrangement would destroy the office of school fund commissioner and would consolidate three or four other chapters into one. The school fund commissioner's work would be assigned to the other officers of township or districts. However, this unscientific and illogical work on the title of Education is not the work of the code commissioners of '51 but of the Superintendent of Public Instruction, and placed into the code by a Resolution of the Gen. Ass' m. of February 5th, 1851, and must be considered as a compilation of the laws then in force.

Code '51, page 185-6. Iowa school law was modified very materially by the Code of '97 and again amended by the 27th and 28th Gen. Ass'n. It is not yet in the best condition possible.

PART II. Code '51, OR PRIVATE LAW.

This part on "Rights of Persons" contains two titles. The first title relates to property in general. It is a brief pro-
vision concerning the law of property. Many questions are left unsettled. Questions concerning title, mortgages and the recording of mortgages, and notice - actual or constructive, as well as the rights of redemption, are left in a vague and unsatisfactory condition.

One explanation is possible for this condition, and that is that in 1851 the complexity of to-day's property relationship did not exist because of the lack of population. This fact is further shown by the absence of law on party walls and easements. The last chapter of this title on "Estates Decedent" is on such a broad and important subject in the law as to entitle it to special treatment under a special title and should logically follow "Domestic Relations", the last title of Part II.

We have already suggested, in this paper under the subject of "Public Law", that "Commercial Relations" or "Commerce and Trade" should be made a part of the Private Law of the state because it relates mainly to the individual. This title should follow the one on property, just discussed above. It would include Weights and Measures, Negotiable Instruments, Liens, Money, Interest and similar personal relations.

The title on "Domestic Relations" is very short. There is no law relating to guardianship of drunkards, the adoption of children. Some of the chapters are not in the logical order, e.g., Husband and Wife proceeds Marriage.

By marriage, sec. 1497, C. 151, a minor attains his majority. Can he make a will under sec. 1277? Can he sell his real estate without the court's permission as given in sec. 1499?

On the whole, the provisions of the law of this part of the code are very short, yet as compared with the "Blue Book" the provisions are much more explicit and satisfactory both in its arrangement and subject matter.
PART III.

Of Courts and Procedure Therein.

This part should have been called "Code of Civil Practice" and should have had eliminated from it Title I on organization of Courts, its officers, including attorneys, receivers, referees. Such elimination requires no explanation to prove it, for is it not self-evident that the courts and minor officers belong to the division of public law of the state, because they are public creations established by the constitution of the state within certain limits just as much as the office of governor or secretary of state? While on the other hand receivers and referees are not public officers in the legal sense but rather belong to part of the Method of Procedure of the courts in doing quasi public business. Therefore they could be classified under Civil Procedure. We also find contempt proceedings under this title. No one can for a moment defend this classification of the law. Proceedings are not organizations but methods of carrying on business in the courts. We must then classify this proceeding under the title of special actions. The next title, Proceedings in supreme and district courts in really the first subdivision belonging to Part III. Under this general title, we also find classified special or particular proceedings, such as attachment and garnishment. These actions are unlike the ordinary method of civil actions and therefore deserve a separate classification. The same is true of judgments. A judgment is the fruit of the law and is of such moment and importance both for the one it is given and against whom it is given that it deserves special and extended treatment under an independent title. Under this Title on Judgment should be found the procedure to revise, vacate and modify judgments. This is not provided for by the Code of '51 or by the "Blue Book". Also under this title properly belongs the writ of Certiorari.
The next title on Special Proceeding is a fairly complete subdivision. Yet we fail to find in it such necessary actions as "To Quiet Title", "Forcible Entry". However, it is a strong title well arranged and the codifiers deserve commendation for its satisfactory arrangement so early in Iowa's legal history.

The next title on the Justice of the Peace might be classified under Township officers and would then belong to the title "County and Township" in part I on Public Law. This classification would leave his duties and powers under part III. This arrangement would not be satisfactory, because this officer is of so small importance that even his limited duties and powers overshadow him and he is lost in his own little world of procedure. The natural result then would be to give him a separate classification as occurs in Code of '51. It may be well to consider the codifier's work at some length at this point. The code of '51 contains 128 sections giving all the duties, jurisdiction, powers of the justice of peace, covering eleven and a half pages, while for the same officer there appears in the "Blue Book" sixty-eight pages and three hundred and thirty-two sections. The Blue Book contained many forms for bonds, oaths, recognizance, venire for jury and the like not found in the code of '51. Again the Blue Book was profuse in its directions to the justice of the peace - much more than was needed. Many sections could have been harmonized and united had the revisers found time to do so. This was done very well in the code of '51.

Some changes have occurred since but not as many as might have been expected. The greatest change occurred when the 25 G.A.(ch.74) limited the fees of the justice of the peace. This was a good idea in more ways than one, to help remove the desire for unjust fees from the unfortunate peoples of the state and thus lowered the possible desire for office by questionable men.
The last Title of Part III is called "Miscellaneous" and this name is appropriate as it is an illogical collection of law. The first chapter, Evidence, is too limited in its scope and many additions are needed in order to modernize the law of evidence. Some additions that deserve to be added to Code of '51 are: Witnesses having an interest in the proceedings should be admitted to testify; moral character to test witness' credibility; certified copies of lost or misplaced papers deeds, etc., should be admitted; Admissions of ordinances of cities, and affidavits should be regulated. And many similar changes would be beneficial to the law of the state. Of course, we mean only general principles should be found in this title on evidence.

The next chapter on "Judgment Liens" should be omitted and the subject matter placed under the title on judgments. The chapter on "Deposits" belongs under "Commercial Relations" in Part II, while the chapter on "Notice and Service" belongs to the titles on "Procedure in Courts" and "Evidence" and "Justice of the Peace Courts". In short, this "Miscellaneous Title" should not have appeared as has been shown but should have been codified into other parts of the law.

Compare the foregoing ideas of the "Miscellaneous Title" to the Code of '73 and '97.

PART IV,

"Of Crimes and Punishments and Proceedings in Criminal Cases."

This title would be less misleading if it were called a "Code of Criminal Practice".

Viewed from the standpoint of liberty and freedom, Criminal Laws and Practice are the laws of progressive civilization. Only a hundred years ago there were over 160 capital crimes on the statute books of England and in the common law. To-day this condition has

Compare these laws to early English, 4 Blackstone, page 18.
been greatly modified. In Iowa no crime, felony or misdemeanor exists unless expressly so made by legislative authority. At the same time, certain well known principles of evidence are required to be fully proven beyond a reasonable doubt that the elements of the crime charged has been established before a person can be convicted of that crime. But this is not all. He must receive notice in the form of an indictment charging him with a crime therein set out and then have an intelligent jury to decide on the facts presented, whether he is guilty as charged. This is a great safeguard of personal liberty.

If we now compare the Blue Book and code of '51 we will notice that there were no crimes against the sovereignty of the state in the former, for the simple reason Iowa was not a state in 1842. This is changed by the code of '51. Treason and the like has been defined and made part of the law of the state.

If we now notice the crime of murder under the "Blue Book" it was defined as "Unlawful killing of a human being in the peace of United States with malice aforethought, and either expressed or implied", while code of '51 defines it as "Whoever kills any human being with malice aforethought either expressed or implied is guilty of murder." Notice the change — "In the peace of United States" is left out as unnecessary to be proven and as being obsolete.

In general it may be said the criminal law of the code of '51 was very complete and well classified. One of the criticisms to be offered by the critic on the criminal code of '51 is the classifications of Prisons and Punishments as part of the title of procedure in
criminal cases. Punishment is not criminal procedure but the result of a criminal trial and should be so considered. This view of the subject would naturally demand a new and separate title for Prisons and Punishments.

See Code of '97.


That the code of '51 was a strong, well codified work for a young state has never been seriously questioned. One great reason for its general good standing is the men who codified it were retained by the legislature to explain to them the terms of the code as the various titles were enacted. So well was it received that one of our neighboring states (Nebraska) copied it verbatim in many parts and enacted this copy as its law for a number of years.

See the Governors (of Nebr.) Messages.

Such recognition of the work surely refutes any question of doubt of the wisdom and common sense put into this code by the codifier and the legislature. Such codification is the highest act in the realm of jurisprudence.

An error of great consequence came near being enacted as law when the code was under discussion. This error was to make all corporators individually liable for the debts of the corporation. Such an error would have made it impossible for a person to own shares in a corporation because with an investment of fifty or a hundred dollars he would subject all his property to the corporation debt. Such a risk would be far too hazardous for men of sense to enter into. Another important and desirable change in the law occurs in the chapter on "Husband and Wife". By the code of '51 the wife may hold separate property, become a creditor of her husband's estate, make separate contracts and be held liable for the same; has rights in the homestead, may convey her land and become an administra-
trix. All of these powers were denied to her by the "Blue Book". That a woman because she is married should be denied the right to manage her own property, in any age, seems absurd. However, such was the common law. That she has been recognized as man's equal in property affairs is a strong step towards establishing the fact that she is his companion and helpmate in the eyes of the law as well as in the social world. A somewhat tardy recognition of woman's individuality independent of the man to whom she is joined by marriage.

Compare II Blackstone, 433, 319, 434, 293, 445, 477 and 488, also 3 Blackstone 140 and 4 id. 28, as showing the relation civilly and criminally.

While this advance appears in the line of married women we have a great slip backwards in the 8th cause for divorce. It reads, "When it shall be made fully apparent that the parties cannot live in peace and happiness together and that their welfare requires a separation." Such a cause for divorce is nothing more or less than a cheap bid for the dissolution of the strongest and most sacred ties that can bind the sexes together. A direct thrust at the heart of a family and the home. We are not surprised to find it repealed in the Revision of '60.

Compare this section to the one in the "Black Code" (or Report of Code Commissioners of 1896) page 653, sec. 4 sub. 6. Also with the divorce laws of Dakota in 1890. It will be seen by the statutes of all the young states that the divorce laws are very lax.

Instead of special legislative act required to change a person's name the code of '51 makes a special provision, thus doing away with ch. 5 of 1845 of the "Blue Book".
Art. 3, Section 26 of the constitution prohibits the possibility of "mixing laws" by requiring only one subject to be embraced in every law passed.

REVISION OF '60.

The Seventh General Assembly of Iowa, on February 1, 1858 passed the following Joint Resolution:

Resolved: "The Senate concurring, That Wm. Smith of Linn county, W. T. Barker of Dubuque county, and Charles Ben Darwin of Des Moines county, be and are hereby appointed Commissioners to draft and report to the Judiciary Committee of the two houses a Code of Civil and Criminal Procedure; and also to report such changes as may seem necessary to harmonize existing laws and adapt them to the new constitution; and said Commissioners to Revise and Codify the General Laws of the state so far as practicable and report the same in several parts through the Judiciary Committees to the legislature as speedily as practicable; and that after the same shall have been enacted as laws by the General Assembly that said Commissioners shall arrange and index all of the General Law into one volume, to be published by order of General Assembly; said volume to contain all General Laws in force in the state."

The committee went to work immediately but they soon became convinced that the undertaking was a longer task than was at first anticipated. They so reported to the General Assembly, and on March 11, 1858 the following Act was passed; An Act providing for a Revision of the Laws of Iowa, and a preparation of a code of Civil and Criminal Procedure.

Section I. Be it enacted by the G.A. of state of Iowa, That the commissioners appointed by the Legislature to conform the laws of the state to the constitution and perform other duties as hereby
directed, to prepare a code of Civil and Criminal Procedure, by the first day of September, 1858.

Section II. Immediately after the filing of their report by said commissioners, the secretary of state shall procure to be printed five hundred copies of said report, and one month previous to the next session of the General Assembly whether the same be an extra or regular one, shall mail to each member thereof one copy of such printed report and shall retain the residue for use of General Assembly."

When the Eighth General Assembly met in January, 1860, the commissioners presented them with the codified laws of what is not parts three and four of the Revision of '60 together with a Revision of the Public and Private law.

The Revision uses the same number of parts with the same heading as the Code '51. Parts I and II use the same number of titles and about the same headings as appear in Code '51. In Title II of Part I, we find a great change in the additions to the law which indicate a growth of population in the state. Here, we find the new offices of Register of State Lands, Supreme Court Reporter, Attorney General, State Binder, and the Geological Survey or Department. Of course, we do not agree to this classification. The Supreme Court Reporter's and Attorney General's duties belong in the law. Therefore, these officers should be classified as judicial officers and not as executive. The chapter on "Geological Survey" belongs practically speaking to mines, and mines belong under the title of "Police Power of the State". It would seem that the commissioners lack originality, breadth of knowledge and power to classify the law, because we find the new office of member of board of supervisors, and executive officer, classified under the chapter "County Judge". The only excuse for such a blunder seems to be that the
The duties of County Judge, as before shown, were executive and judicial, and in taking away from the County Judge the executive duties the commissioners substituted the name Board of Supervisors for County Judge, leaving the sections in the same order as they appeared in the Code '51. This was a mistake. The Board of Supervisors should be classified under the general head of counties and not be mixed up with the County Judge.

The next addition of any value occurs in the title on "Highways and Roads" of Code '51. This title contains a new chapter called "Swamp Lands". It consists of eleven articles or separate acts passed by the legislature between February 5, 1851 and March 22, 1858. These acts are not classified or consolidated or harmonized, simply put together in chronological order. The great surprise to the student lies in the fact that these lands were given to the counties by the legislatures, and therefore should be classified under the general head of counties, and thereby subject it to the control of the Board of Supervisors. This simple arrangement is ignored. Under the "Police Power" of the state was found a peculiar arrangement. Here were placed the chapters on "General Banking", "State Banks", "Agricultural College" and "Insurance". All of these chapters save "Agricultural College" which belongs to Education should have been classified under corporations. These chapters were not police in nature, intention or construction, and why they were so classified is a very hard question to answer, when we know that the title on corporations was a part of the code of '51. Did these men really attempt to do their work or did they not know how?

There are other changes in Part I but they do not deserve any special notice at this point and the same may be said of part II. The fact is that the codifiers did not in the least codify either of
these parts but put the unharmonized laws into various titles apparently regardless of method or purpose. The natural conclusion is, that they did not consider these parts as belonging to the work of codification, certainly an erroneous conclusion when we recall the instructions given to them at the time of their appointment.

See Sec. I and II of Seventh General Assembly on "Revision of Laws of Iowa" passed March 11, 1858. Many persons claim that the first instructions given the commissioners were superseded by the second and they were not codifiers of the law. Was that the real intention of the General Assembly? It is believed not. See also the Report of Code Commissioners of '73 page 5. (published in 1871).

PART III.

This part of the Revision is in a state of confusion and legal chaos equal to the decisions of the common law as far as the logical subdivisions of it are concerned. No attempt is made whatsoever to codify it into harmonized titles. The ideas of law therein expressed are mainly derived from the codes of Kentucky, New York, Missouri, Oregon, Wisconsin and California. However, the main works relied upon are the New York Code and the Code '51. The great error of the Code of '51 was the amount of new material upon the subject of Civil Procedure. This new material was not comprehended by the legal profession as it should have been because of the lack of published information on the subject. The natural result was that the Code of Civil Procedure did not give general satisfaction. This trouble caused the codifiers to follow the well known sections of the Code of '51 and certain other well known codes of which the New York Code of Civil Procedure played the greatest part in the formation of the Code of Civil Procedure of the Revision.

If we now consider the new features of the Civil Code in detail, we find that the chapter on "Parties to an Action" has not been materially changed even by Code of 1897; while the chapter on "Place of Bringing the Action" does not provide any law on such subjects as
Injuries to Real Property, Foreclosure of Mortgages, Actions against Common Carriers, Construction Companies, or Insurance Companies. The chapter on "Change of Venue" is strong in its construction but fails to provide for a change in the place of trial whenever the parties may so agree, or where a jury cannot be obtained, or to grant a special trial when one is needed by the court or accused. Again, the law relating to the manner of commencing actions fails to give the required power to sue corporations in general in any county in which they may carry on business.

The chapter on "Pleading" is logical and very satisfactory save in that it fails to make any provision for the adverse party to obtain a copy of the pleadings or to take the original copy from the files. This chapter is of great interest to the lawyer - especially the common law lawyer. It provides for a limited number of pleadings in order to bring to an issue the facts in the cause.

Compare Stephens Common Law Pleading ch. II and 3 Blackstone 270 et seq.

At the same time, it is flexible enough to allow the joining of more than one kind of a cause of action in the same petition, which is unlike the common law method of pleading. This system of pleading is neither common law nor equity, but a new scheme devised to bring the facts of the controversy before the court for its consideration.

A mistaken idea is abroad in the "Code-states" that the study of common law pleading is a valueless task. This is very far from the truth, and all lawyers-to-be are advised to study diligently some good text on common law pleading as it will be found very beneficial to them at all times. Even old lawyers may find this "free thought" of value to them if they do likewise.

Having the pleadings correctly filed, the trial and judgment follows in natural order. The Revision does not recognize the value of shorthand reporter at all nor does it provide for a new notice of Code '07, sec. 245.
trial after a cause has once been continued. However, the chapter is in harmony with progressive civilization in that it tries to give to the parties an impartial jury a chance to make exceptions to the rulings of the court; provides reasons or causes for new trial and the like. Many of the sections of the chapter on Attachment and Garnishment are found in Code '51, but some very vital sections are added upon the subjects of additional security, falsely suing out the writ of attachment, specific description of property, satisfaction of the records after judgment and garnishment of negotiable paper, all of these privileges are important rights in the large cities where the population is constantly shifting. The suit, having been successfully prosecuted, execution will lie immediately (or on Sunday under certain conditions) to satisfy the judgment.

Code '97, sec. 3956, Revision 3263.

The execution may be issued against personal and real property, but only against real property outside of the county from which it is issued. This chapter on Execution recognizes certain exemptions from execution but fails to reach the interest a person may have in mortgaged personal property not exempt from execution. A strong indication that personal property was not at that time called upon to satisfy judgments as it is at present.

In all of these proceedings, we find safe-guards against the abuse of the right of execution by placing the party suing out the writ under an indemnifying bond. Thus we see property interests are well provided for by the Revision but such is not the case of the wage earner interest. He is left without a remedy if the property on which he has performed labor is seized and sold. This error has been corrected by the later Codes.

Code '73, 3100 and code '97, 4041.
Perhaps the great error of this chapter was the failure to require the appraisement of the property to be sold under execution, thus allowing great opportunity for collusion and fraud by the officers and creditors. This error is somewhat mitigated by compelling the senior mortgagee to sell to the junior if asked to do so.

Having considered the leading chapters of the Civil Code at some length, we may sum up by saying that it is the first general fundamental law of Civil Procedure enacted in Iowa. The Code '51 contained many similar chapters and sections but it was not in the harmonious form and tone as now found in the Revision. In short, so well done was this part that only a few modifications have taken place in it since its adoption.

It must then be conceded on the whole that the compilation from other codes was successfully and satisfactorily performed.

Code of Criminal Procedure.

PART IV.

In the Criminal Statutes of a nation one may find that nation's moral life. Offenses against a civilized state and its citizen increase with the increase of population, because organized society is very complex in its social and business relations. The Revision shows that Iowa has grown in population.

Among the new laws we find a law relating to incest — an offense against morality. Another law relating to abortion — an offense against the person. Destruction of mortgaged property is made a crime. A significant criminal statute was enacted by making false entry of fines and fees on the dockets of the court a misdemeanor. This law is a step towards stopping political corruption in peculiar cases.
Passing from the consideration of the new crimes in the Revision to the power of arrest it will be found that ample provisions have been made for the arrest with or without a warrant by a private person or public officer under certain restraints. However, the law does not make it a duty for a person to arrest one who is found committing a crime, but only provides that he may do so, and also, that if he refuses to assist in arresting a person when called upon to do so he shall be guilty of a misdemeanor.

The question naturally arises if a private person, on his own summons, attempt to arrest a person who is about to commit a felony, should kill him while attempting the arrest, would he be justified if the person desisted in the attempt to commit the felony? Was it the private person's duty? The law is silent on this subject.

Code '97, p. 1991. Code '73, sec. 4201. Rev. of '60, sec. 4549. The law wisely provides that in case of felony the accused must be confronted by the prosecuting witness in open court. While in misdemeanors he may appear by counsel. Felony is defined as an offense punishable by death or which is, or in the discretion of the court may be punishable by imprisonment in the penitentiary. All other offenses are misdemeanors.

The statutes of Iowa further provide that an indictment in nearly all crimes must be furnished to the accused, drawn by the grand jury of the county in which the crime occurred and this indictment must state the accused's name, if possible, the crime charged, and such essentials of the crime as are necessary matter to make the criminal charge definite.
At the same time, the law gives the prisoner the right to a speedy and public trial, a counsel at all times, and an impartial jury. These conditions having been complied with, and the defendant acquitted, he cannot again be tried for the same crime. This is as it should be, although it has been claimed that this law is one-sided and in that it favors the individual more than the state by providing an impartial jury and a fair judge upon whose feelings and sympathy the accused may work to his advantage. Can it be doubted that in a civilized state, the individual suffers more from a wrongful conviction than the state or society does by the failure to convict him? Everything else being equal the individual will reform sooner and better than society. The convicted person may appeal to the Supreme Court in all criminal cases and may obtain a reversal of his case if errors of material value have been committed.

But in case of acquittal the state cannot obtain a reversal in the Supreme Court. This is good progressive law, for a person should never be branded as a criminal until he is so proven in every detail and beyond a reasonable doubt. While the Code of Criminal Procedure is especially explicit in its terms relating to convicting a person of a crime, it also makes the magistrates, to gether with sheriffs, constables, marshals and their deputies, and policemen, peace officers. However, the right to bind a person over to keep the peace is limited to the magistrates. Perhaps one of the best chapters in the criminal code is the one on limitation of the time of commencing criminal actions. For murder there is no limitation. For offenses against sex, especially women, eighteen months after the committing of the offense and for wrongs of a public nature three
years. These are the main limitations. Without them, an innocent person might be called to account, convicted, and imprisoned for a crime without a chance to defend himself by simply waiting until his witnesses were dead or gone beyond the jurisdiction of the state.

Since the above was written the newspapers have been giving details of the trial of Alexander of Okl. for murder in Kc. over 30 years ago. In this case however many of the persons connected with the parties are still alive. Special attention is called to 20 Am.L.Rev. 764 for a case that presents many fine points of law, and dangers to life and property if time of commencing actions were not limited in a reasonable way. It will repay the reading of it tenfold.

Thus leaving him powerless to establish his innocence. While this chapter is especially valuable to the defendant, the state however reserves to itself the right to stop the running of the statute as long as the individual is beyond the state's jurisdiction. Thence making it possible to convict a person of a crime even beyond the period mentioned in the statute.

The main provisions of the last chapter are to be found in the code '51 but not in the Revision of '42.

Without further examining the Criminal Code of the Revision, it may be said that the effort to establish a systematic, and logical line of procedure in criminal cases was very successfully carried out by the codifiers and adopted by the legislature without any material alteration.

Both the layman and the lawyer will concede, it is believed, that of all the law that should be known as fully as possible it is the criminal law. The criminal law, operates directly upon the individual regardless of the person, his education, birth, financial or social standing, and in that manner limits more effectually his powers and freedom than any other law. Therefore, the criminal law cannot be too certain or well known. This fact was recognized by the codifiers of '60 and they attempted to give and did succeed in
giving, the state a definite and knowable system of procedure as well as equally certain and well defined acts which were made crimes. But it must be borne in mind that the names of the greatest number of crimes are found in and often defined by the code '51.

General Observations on the Revision.

Barring certain new chapters and sections in part 3 and 4 very little new material, the result of the codifiers' work, is to be found in the Revision. Take for example all of the school laws,—they are nothing more or less than a series of articles grouped into one body chronologically. These articles are acts passed by the legislatures after the adoption of the constitution of '57. These acts, like the majority of others, are not in the least harmonized with the existing law but simply placed into some title of the code,—a position not always logically chosen. Only in a few cases do we find that the codifiers have united the existing statute law with the case-law of the Iowa Reports. These cases though important are not numerous enough to warrant special treatment in this paper.

The only entirely new feature to the whole Revision is a system of notes referring to prior existing laws and citations to decisions of the Supreme Court of Iowa. These notes and decisions are usually placed at the end of each chapter to which they relate.

In the eyes of the lawyer of today, they are of very little value. They are not broad enough to serve as a digest, or extended enough to furnish any idea whether they are in point with the cause he may have in hand should he have occasion to refer to them.

Just why the legislature was foolish enough to pay Charles Darwin $4000 for such citations is a riddle hard to solve, unless it was that this was a new line of work in the law and its value not fully comprehended.

It is with much regret that I had to pass over the Revision and
not be able to state exactly from whence the added sections of part III and IV were obtained. It may be of some consolation to the people of Iowa to learn that years ago a janitor sold 'loads of the old records' to a junk dealer in Des Moines, and in these loads were scattered in a more or less perfect state, the material needed for this part of the work. It is also a matter of congratulation to Iowa that we now have a good historical building under the state's care where such material may be gathered.
Chapter 75 of the Laws of 1870 provides that William H. Seevens of Mahaska county, John C. Polley of Clinton county and William J. W. G. Hammond of Johnson county was appointed to fill out a vacancy caused by resignation of Mr. Polley. Knight of Dubuque county shall be appointed commissioners to "Carefully Revise the statutes of this state, re-write the same, divide them into appropriate parts, arrange them under proper titles and chapters, omit all parts repealed and such as have become obsolete, insert all amendments, so as to make the same complete, transpose words and sentences, arrange and number the same in their proper order, and when necessary change the phraseology by leaving out and inserting words and sentences so as to adopt the same to the form of county government and the system of courts as fixed by law. They shall omit from such revision all statutes of a private, local and temporary character, those relating to apportionment of the state into congressional, senatorial, representation and judicial districts. All references to their own report or that of any former commission on revision to prior laws, decisions, and notes." This enormous task was supposed to be completed by July 4, 1871. It is superfluous to state that such an undertaking was beyond human powers and the revised code did not appear at that time. But it was completed in time to be adopted and published by the first of September, 1873. It should be noticed that no instructions were given to these men to reconcile the statute and case-law - only the statutes were to be considered. By way of introduction, it may be stated, that the Code '73 is divided into parts and titles along the same general
The first important revision of the law is found in the chapter on Statutes. It provides, that all general legislation is to take effect on the Fourth of July next following its passage, and that within ten days after adjournment of legislature the secretary of state is to prepare a copy of all the laws passed and have the same published according to the law therein provided, such published laws to be received in evidence as the law of the state.

Courts of Iowa, Blue Book and Code of '51.

An important provision in the codification of the Iowa law relates to the courts. Under the provision of '42 there existed the Supreme Court with general appellate territorial jurisdiction and a court for correction of errors, the district court with "Authority to hear and determine all cases of crimes and misdemeanors whatsoever" and "over all matters and suits at common law and in Chancery". Appeals from the district court were taken to the supreme court. A court of probate had jurisdiction over estates of testators or intestates and other necessary matters relating thereto. Appeals from it were taken to the district court. The constitution of '46 provided for a supreme court of general appellate jurisdiction and correction of errors from lower courts, a district court having a single judge with general original jurisdiction both civil and criminal, and at common law and in chancery. Appeals from it had to be taken to the supreme court. The constitution further provided for "such inferior courts as the General Assembly may establish." One of these, the probate court of Code '51, was a legislative court and from its decision there was no appeal. The jurisdiction of this court was the same as given in the "Blue Book" together with guardians for minors and insane persons.
The Revision of '60.

The constitution of '57 reads: "The judicial power shall be vested in a supreme court, district court, and such other courts, inferior to supreme court, as the General Assembly may from time to time establish". This provision of the statute - "Inferior to the supreme court" - provides for a legislative court with superior jurisdiction to the constitutional district court, a very unusual provision when we remember that the jurisdiction of all the constitutional courts are fixed by the constitution. The jurisdiction of the supreme and district courts remained the same under the constitution of '57 as in '46. The Revision also provided for a "County Court" in each county with the power to hear causes relating "To roads, ferries, the poor, and cases of bastardy", and such other matter as may be provided by law. The jurisdiction of the court of probate remained the same as given by the Code '51.

Code '75.

The powers of the supreme and district court remained unchanged by the Code of '73 while a new court was created by chapter 122 of the Public Acts of the 12th General Assembly. This court was incorporated into the Code '75 and was known as the Circuit Court. It had power to exercise general original jurisdiction concurrent with the district court, and exclusive jurisdiction in matters of probate and guardianship. Beyond a doubt this court was created by the General Assembly to assist the over-crowded district courts. However, it was not a success, and it was practically superseded by the constitutional amendment of '84 and finally abolished by the 21st General Assembly. The 12th G.A. established a general-term court.

One cannot but rejoice to see that the proposed bill to establish an appellate court in Iowa was not passed by the 28th G.A. The fact is very apparent to all lawyers that we have enough law reports now without any more additions, especially when it
will not bring forth any special good that cannot be reached in another way. Such was the history of the "General Term Court".

to hear appeals in first instance from the circuit and district courts. This court did not meet the needs of the state and was soon abolished. The courts of today are the same as provided by the constitution and its amendments. The great change lies in allowing more than one judge in each judicial district and the creation of more districts by the general assembly. In this state exists and has always existed inferior tribunal, the Justice of the Peace. His jurisdiction is very limited. We have also in the cities several kinds of courts, (Superior, Police and Mayor's) all of them inferior to the District Court.

One of the progressive educational features of the code of '73 is that the law makes it possible for incorporated cities to establish a free public library at the city's expense. - A privilege that has only been fully realized and taken advantage of at this late day. Along the same line, is the right given the city to establish water works and maintain them, as well as control the source or stream of water for a distance of five miles above the place from which the water is taken for city purposes.

Political corruption is again manifested in this state by the fact that a list of the voters must be made out each year with the location of the voter's residence, and his occupation. Certainly this is an unfortunate feature in an enlightened state that laws are necessary on such subjects.

One of the most important acts of codification in the code of
'73 relates to insurance companies. This chapter is the codified law of chapter 133 of 12th G.A. and provides very fully as to formation of the company, amount of capital required and how invested, directors, their election and meetings, examination of the company's books, limits as to time of risks, to be insured, losses and their

It may be of interest to the reader to look up the "Valued Policy" proposal by the 28 Gen. Ass'n but vetoed by the governor, also settlements, annual statements, and what they must contain. It also gives the requirements to be complied with by foreign companies in order to do business in this state. The same kind of provision as far as applicable is enacted for life insurance companies.

One of the queer incidents of the work of the codifiers and their recommendations is found in the chapter on "Mutual Building Associations". This chapter provides for formation of associations of persons, to mutually assist each other and others to build and repair and to own houses by the help derived from the money loaned by the association. This chapter was put into the code under protest by the committee as having "proved a failure and been condemned" in other states.

See the last law on Building and Loan Ass'n for 1900. Compare the results in Iowa, Ill., Ala., and Minn. to the codifiers' view and it is believed the people will now agree with them.

In a state where the growth of public and quasi-public corporations has been so great as in Iowa, it is especially desirable that the law should be as explicit and knowable as possible in order that the individual's property rights may be protected, and such is the tendency of the Code of '73. The code '73 wisely provides a new statute relating to the right to appeal from the award of the appraiser. This is certainly an equitable provision. Two other important changes on real property occurred. The one, section 1937, C.'73 provides that the joining of either husband or wife with the
other in a deed or conveyance does not transfer from him or her the right he or she has obtained by the bonds of matrimony unless the instrument actually so states on the face. This is an evident sign that the wife must have the same change to know and to be bound by her actions as the husband has been in the past. The other section 1940, provides for a vendor's lien under certain restrictions tending to prohibit fraud and collusion.

Two great changes occur in the law on homesteads. The homestead whether owned by wife or husband is made exempt from judicial sale. Also the giving of the homestead to the surviving wife or husband by will of the deceased in lieu of the distributive share provided by law, shall prohibit such survivor to dispose of the legal title in any way and the legal title passes to the next person who takes either by descent or by the terms of the will, exempt from the antecedent debts.

The law relating to husband and wife is almost entirely a new chapter. The code of '51 and the Revision made great advances to place the wife upon the same general scale as the husband but each one failed. The code '73 settled almost every contested point and granted the same rights and privileges to the wife as existed to the husband in relation to contracts and torts, and the obligations growing out of them.

By the change in the length of time from six months to one year required in order to become a resident of this state before divorce proceedings can be instituted, Iowa was saved from becoming a Mecca for the discontented, wilfully so or otherwise, thus avoiding the stigma and disgrace of being a state partially supported by the money obtained by striking at the heart blood of society and the life of the family. The law of divorce was also modified in re-
garded to the petition and alimony. An entirely new provision relating to "annulling illegal marriages" was added. These changes have proven very beneficial to society and to the state.

Numerous changes in the language are to be found in the code of civil procedure but very few entirely new sections are enacted. Among these is a change in the pleadings making it possible to bring suit on all kinds of torts in the same petition and at the same time, providing for the admission of such facts as will mitigate the damages in each case or all.

Section 2967 of the Revision; Chapter 167 Section 19,13th G.A.; and Chapter 28,9th G.A. was harmonized into one whole providing that any written instrument referred to in a pleading set out in the same, shall be deemed genuine and admitted unless the person who is said to have issued it denies the same under oath. This is supposed to be an admirable provision in that it abbreviates the length of time required to try many causes. In fact, it is very injurious because nearly all men will do what their counsel advises and some counsels are so unscrupulous as to advise their clients to deny under oath any and all instruments in order to make it as nearly impossible for the opposite party to win his suit as the law will allow. It is very doubtful whether this should be a part of the code because it tends to ruin the morals of the state. One of the far reaching changes in the law of evidence given to us by the code of '73 is copied from the New York Civil Code of Procedure as amended in 1869. It provides for the exclusion of any evidence relating to transactions of one deceased by his personal representative, assignee, or one taking from him in some relationship e.g., as heir at law, legatee and the like, but allows the evidence of these persons to be admitted, provided it does not relate to matters about which the deceased could have testified.
the party at interest can scarcely be too highly appreciated. It is a great safeguard against fraud and deceit. It nearly forbids even the temptation to commit a wrong in this manner and yet leaves room for the facts, the truth which is desired in all controversies.

Observations on the Code of '73.

While the code of '51 was especially strong in the divisions of public and private law and the Revision was well codified in regard to the divisions of Civil Practice and Criminal Procedure, the code '73 was a combination of the best parts of each of these two codes. Errors in classification were almost eliminated. The work was thorough and fairly scientific from the "Natural Method".

However, the work of the editor or proof reader was not satisfactory. Many errors crept into the printed page as was shown afterwards by laws of Iowa by Miller and McClain. In general, the code was adopted almost verbatim the way it was reported by the commissioners to the legislature, certainly a fine compliment to the codifiers.

It should also be borne in mind that many more changes occurred in the code '73 than were noticed in the foregoing pages.
CODE '97.

An act was passed by the 25th G.A. creating a code commission of non-partisan persons to be appointed by the house, senate and supreme court. This act placed certain qualifications and requirements upon the persons to be appointed. Before entering upon their duties they must subscribe to an oath to perform their work to the best of their knowledge and ability.

The duty of the Commission (according to section 4 of the Act) was to "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, phrases, and sentences, arrange the same into sections and 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." There were certain other provisions defining the time in which the work was to be completed, compensation of commission and the like. These will not be considered. The men appointed were Chancellor McClain, Iowa City, Charles Baker, Iowa City, John Y. Stone, Glenwood, H.S. Wonslow, Newton, H.F. Dale, Des Moines. They finished and reported the "Proposed Revision of Code of Iowa", "The Black Code", in 1906. The "Black Code" had so many errors in it, according to our legislators, that the legislature itself undertook to codify the laws. It is only justice to the commissioners to say that very few changes of any importance were made in their report. That the so-called new "acts" or "bills of codification" reported to the legislature by a member or committee were often the same act as proposed by the "Black Code" changed in phraseology in a single section, or paragraph, while the bill purported to be an entirely new and rewritten act.
This was not true as often as claimed. Again the new acts were founded upon the ideas found in the "Black Code" almost in every case. The notable exception was the chapter on "Collateral Inheritance Tax" which is a new work by the general assembly that enacted the code '97.

Under the code practice of '73 each district judge was allowed to fix the time of filing motions or pleadings to make up issues during vacation, and to inflict penalties for an over-ruled motion or demurrer and such other rules as he may deem expedient and not inconsistent with the code. This kind of a privilege was wrong and illogical from the first. There could scarcely be such a thing as uniformity in the various counties, so as to allow men to know when they would be called upon to answer a pleading, or when they would be able to perform their duties in an adjacent county. No two adjacent counties were likely to have the same rules making it almost impossible for a lawyer to practice law in more than one county. This condition needed to be changed, and common rules adopted. Therefore, the 21st G.A. passed an act calling a convention of the District Judges in Des Moines for the purpose of passing and adopting uniform rules in all the district courts of the state and these rules to be binding in place of any and all previous rules. So well suited to Iowa practice were these regulations that they were incorporated into the code of '97 as the law of the state on this subject. This improvement in pleading was welcomed by every lawyer having any considerable practice as just and reasonable.

Ever since the days of Magna Charta men have contended for and against the jury system. They have advocated no jury, or a jury consisting of less than 12 men, a majority vote, or a three fourths, or a five sixth majority vote to be as binding as the unanimous
agreement of twelve men. This complaint against the jury has

Compare J.K. Choate's address in 21 Am. Bar Ass'n 285 (same address in 58 Alb. L. J. 158) to 31 Alb. L. J. 504; 30 Am. L. R. 436; 20 Am. L. R. 661; 2 Green Bag 300; 5 Green Bag 550; 1 Am. S. Rep. 322. One feels that Choate's side has the strong end of the argument after all.

compelled the law makers of the state to make special laws looking towards the selection of men as jurors who were the typical men of the county or district from which they were selected. This fact, that typical men are desired, is based upon the idea that the verdict of a jury is a judgment upon the facts by intelligent and impartial men whose finding is more likely to agree with that community's idea of justice than if the verdict was found by a judge or bank of judges. Such a state of affairs has caused the qualifications and manner of selecting the jurors to vary with every code enacted in Iowa in order if possible to obtain at all times a fair and intelligent jury.

Under the "Blue Book" every "person who is a qualified elector shall be liable to serve as juror; and the Code '51 adds to this qualification, of good moral character, sound judgment and in full possession of senses of hearing and seeing are competent jurors. The Revision and Code of '73 do not change the law. The Code of '97 adds to the above qualifications, "Who can speak, read and write the English language." The last change is very much favored by the thinking men of the day, because it tends to bring men into the jury who are intelligent and progressive citizens.

The manner of selecting the jurors has had an evolutionary experience. Under the "Blue Book" the jurors were selected by the county commissioners thirty days previous to the sitting of the district court.

The Code of '51 required the county clerk to apportion the
number to be selected among the various townships, basing this apportionment on the number of votes cast at last election. The judges of election to return the requisite number of names to county judge. From these lists are to be drawn by the clerk the required number of jurors. The Revision added another provision to Code '51 in that it calls for two lists - one Grand Jury, the other Petit Jury, and also fixed a maximum length of service for a juror. Code of '73 substituted the county auditor for county clerk as the person to apportion the list of jurors and disqualified any person as a juror who had served on the jury within one year. The Code of '97 added a new provision as follows: Board of Supervisors to supply list of names if judges of election fail; auditor and clerk to prepare two separate lists of names from the lists returned by judges of election, said lists to be sealed in separate boxes and given to the clerk of district court; and further provided for tailesmen, or an additional list of names of persons to be called as jurors if needed. While the drawing of the names must be done in the presence of the auditor, clerk of district and recorder or any two of them. All the codes are uniform in requiring the service of notice on judges of election and on the persons drawn as jurors, shall be done by sheriff. All codes also agree upon certain disqualifications, such as age, occupation, knowledge of facts, relationship.

In this brief outline of the jury system may be seen an effort on the part of the legislature to make a law that will give the people of Iowa in all cases jurors who are intelligent, possessing common sense, impartial and unprofessional. A very laudable undertaking by our legislators. (It may be added by way of explanation that the above discussion relates to the jury of the district court only.)

It would be extremely interesting to study the question of intoxication liquors from the "Blue Book's" provisions relating to
a "grocery" through the shifting stages of low license to the prohibitory law and finally to the much disputed and complicated mulct law of Code '97, but the limits of this paper forbid.

Perhaps one of the best if not the best change (not suggested by Code Commission) in the revenue title of Code '97 is to be found in the addition made to revenue law by inserting a chapter relating to a collateral inheritance tax. The problem of taxation in the modern states has assumed a most momentous aspect. On the one hand, the enormous growth of corporate capital, and the consequent ease with which the tax may be shifted to the consumer, while on the other hand, a constantly growing tendency to rebel against the additional taxes by the consumer, caused by the ever growing socialistic undertakings of the city and the state, makes the problem of taxation a burden and a care to the statesmen of the age. To collect the necessary taxes from those who can bear the burden, and to collect them when it is most convenient to the tax payer, and as near as possible to the person who actually pays the tax, are problems not readily solved by any single scheme of taxation. But it is believed and argued that inheritance tax comes as near to this ideal as possible. At the time of inheritance, the individual receives property he never earned by any kind of labor. A tax upon that property can scarcely be shifted or avoided and it falls upon him when it can be easily borne as well as paid. Such in short, is the theory of an inheritance tax. The same would be true of a collateral inher-


heritance tax. Iowa's law on this subject provides for a very low tax rate. Consequently very little revenue can be derived from this source because the state is yet a youth in financial accumulations
compared with eastern states.

The law relating to education has been revised, rewritten and harmoniously codified. This is the first time in Iowa's history when her school laws have been reduced to a somewhat reasonable and satisfactory condition. Much of this work was supposed to have been done by the commissioners in 1860. Looking over the past history of Iowa, one cannot fail to read in her school laws a grave error.

May it be remembered to the credit of the 28 G.A. that they very materially increased the cause of education in Iowa by their just appropriations. Fortunately, Politics did not succeed in scattering the state's money for "dwarfed" schools of higher learning, schools of no higher grade than high schools in many cities of the state.

Instead of providing means for building finely equipped schools of higher learning as her neighboring sister states have done, she has squandered money in many foolish ways, which might have been used to advantage in her educational work. A noted example of this kind is the soldiers and sailors monument of Des Moines. A monument neither artistic in the eye of the artist, nor the novice; stuck away on a vacant lot just south of the capitol, between a church building and a row of brick flats. A location certainly mean enough to destroy any possible beauty in this work. This excuse called an honor to the soldiers and sailors of Iowa cost the state over $147,000. If this same sum had been used to construct a Memorial Hall for books, charts, statues, flags, paintings, etc., of the civil war or used some other way both as a memorial and a thing of service, no one would have found cause for complaint. The last legislature of Iowa has attempted to correct this error in a partial way by appropriating over fifty thousand dollars for a Memorial Hall, and the previous legislature had made a provision for a few new buildings at the state institutions. A tardy recognition of Iowa's needs in the educational line.

A change of vital importance occurs in the law of wills. It
now provides that whatever is given by will to the surviving husband or wife by the testator shall be presumed to be given in the place of the distributive share, homestead and all exemptions, unless the will explicitly states the contrary on its face. Before this change the surviving spouse was asked to elect and was given a period of six months in which to make the choice between the rights given by law and the provision of the will.

Another section of considerable moment to eccentric persons relates to a citizen of this state who absents himself from the state for a period of seven years and his whereabouts are unknown during this time by his relatives. Any person may administer upon his estate by following out the law in regard to publication and the like, if such person would have a right to administer upon such estate if the owner were known to be dead. This is a law which is said to take away a man's property without due process of law. Yet, can this be claimed if that property has been abandoned for seven years? And the owner's residence unknown and himself unheard of during all of this period? Why longer look after his property for him? Has he not forfeited his right thereto by committing "this public tort"?

Often the layman complains that the law is a hard and cruel taskmaster. Sometimes this condition is shown by the legislators to be the condition wanted regardless of numerous and unjust results which may follow by leaving some harsh and antiquated statute in force. One of these appears in code section 3565. This section does not provide for cases of hardship that may arise from defective pleadings or bad judgment of the judge or the ill-conceived ideas of the law or facts by the counsel as did the proposed section by the code commissioners. It provided that a person could plead over
after an adverse ruling and not lose his right by thus pleading, but that the right could be excepted to, as it should be, and then waived until a hearing in the Supreme Court is reached, if it was found necessary to go to the supreme court after the decision on the next pleading had been given. Such a law would be a great saving of time, money, and worry, but it was stricken out by the legislature as dangerous. Why always cry against the law as harsh and cruel, when the cause for such conditions can be found in the legislators? One of the fundamental principles of evidence, that no man shall be compelled to answer any question that will incriminate himself or hold him up to public ignominy has been changed to "in prosecutions against gaming, betting, lotteries, dealings in options, keeping gambling house" and the like any person shall be required to answer any question even if it does incriminate him or hold him up to public ignominy, but no criminal action can be brought against him in any case where such evidence is to be used as coming from him. This is a severe statute because the individual has no redress for the compromising position in which he may be placed by having to testify. However, he should not be found in such an occupation as to cause himself to be held up to the ignominy of the public by testifying to his actions. Such is his cold comfort at best and all he really deserves.
OBSERVATIONS ON CODE OF '97.

The greatest defect as yet found in the code lies in the annotations of the work. They are not always reliable, because they are misplaced. This error no doubt crept into the work through the fact that the editor, Emlen McClain, had only a limited time in which to do the required annotations. The code still leaves unprovided a thorough and complete system of tracing title to real property.

It fails to remove the blunder of the earlier codes of classifying adultery as a public offense, and then deliberately putting into the section relating thereto a clause making it a private offense.

The law relating to special assessments needs to be written and modified. The same is true of building and loan associations.

See the work just completed by the 29 G.A. on this subject.

GENERAL SUMMARV OF CODES OF IOWA.

The law, like the people who created it, has been a continuous process of evolution. This process is seen especially in the code of Civil Practice, the Institutions and corporations of the state.

On the whole, it must be agreed that the codification of the statute of a state at given intervals is a good work.
PRIVATE COMPILATIONS.

Overtone's code of Practice.

This work was compiled by D.Y. Overtone of Burlington, Iowa, and issued from the press of Callaghan & Co., Chicago, Ill. Mr. Overtone was a practicing attorney for many years at Burlington, Iowa.

This work was a collection of the existing statutes of "Civil Practice" in Iowa and Wisconsin, to which the author added a new and valuable feature in the annotations placed after each section. These annotations were citations from the decisions of the first 35 volumes of Iowa reports and 33 volumes of Wisconsin. There were also added to the work additional citations from the New York and the Kansas reports.

To the Iowa lawyer a peculiar arrangement presents itself in this work. For some unknown reason the author, an Iowa man, saw fit to place the law of Wisconsin first and Iowa last in each case. Why he should have thus treated the Iowa law does not seem clear from anything stated by the author that we could discover.

He gives citations from whence each statute was taken, also in many cases cites repealed sections. This feature was of value to a person who desired to reconcile or justify contradictions or modifications as found in his annotations. It was also of some special value to the practicing lawyer. No special success seems to have crowned the efforts of the author and it remained for Chan. McClain to succeed in gaining the attention of the lawyers by using the same system of citations in his "annotated statutes" in 1880. Perhaps one of the reasons for the slow sale of this book was the novelty of arrangement of the citations but more especially the fact it carried water on both shoulders. That is to say, it treated the statutes of two states and only the civil practice parts while the busy man needs all the law all the time and is not willing to buy only parts of it.
Stacy on Code of Civil Procedure of State of Iowa.

This work was a compilation of the laws on Civil Procedure given in the code of '73 and all statutes on the same subject passed by the 15th, 16th, and 17th General Assemblies which added to or modified the Code of '73.

The author calls his work a compilation "in compact form and revised to date," and also says that he has made "references to prior statutes and decisions of Supreme Court of Iowa." (These references are of little practical value.) The author's statement is true that the work is a compilation of Civil Procedure and it emphasizes especially the parts relating thereto as found in the Public, Private, and Civil Procedure laws of the code of '73.

It is not a work that would receive any special recognition from the lawyer of today. If a work on Civil Procedure is desired why he buys a text and not a system of compiled statutes which give him no special help or new light on the language of the statute. A good reliable index to a code is "just as good." Iowa code of '97 needs one. Consequently, such a work is short lived. There are few lawyers that ever heard of this work. Its author, J. S. Stacy, was a practicing attorney of Anamosa, Iowa.

Examine for example, the crime 'assault with intent to commit murder'. You will learn the general plan and scope of the work. First is given the section of the code of '73 (or the statute law) which is followed by "A Form of Indictment","Indictment-Malice Aforethought","Must specify Felony","Weapon-Description of","Duplicity-Two Defendants","Loaded Gun","Jurisdiction","Intent","Essential Ingredient","Intent Inferred","Elements-Assault with Intent to commit Manslaughter". Even a glance at the above arrangement will convince the novice or layman that Iowa's criminal record could not have been so great as to have called forth decisions by the supreme court on all of the above points under this one section, to say less
Iowa Criminal Code and Digest and Criminal Pleading and Practice.

This work generally known as "Davis' Criminal Code", was issued through Hills & Co., Des Moines, Iowa, in 1879 and compiled by J.C. Davis, a lawyer of Marion, Iowa.

It is a compilation of the criminal laws of the state to July 1, 1878, and also a digest of the decisions of the supreme court of Iowa for the same period. It is divided into two parts. Part I contains all the "crimes and offenses with forms of information and indictments". Part II contains "the practice and incidents of trials". The work is alphabetically arranged throughout. It is the first publication of its kind in the state. It would seem that it never met with the general success that it deserved, nor was its author recognized as having accomplished a great work in the arrangement of his original part, i.e., the digest or annotations.
of the whole work. The fact is Mr. Davis added liberal citations by annotations from the decisions of other states whenever he thought they would be of any special value, beside the ones cited from our own reports. These decisions from outside courts seem to have been selected in a scholarly manner, and well classified. In short the author displayed great skill and breadth of knowledge in this work of annotating the criminal code of Iowa.

For some reason or other, it failed to become any more popular than Stacy's compilation of the "Civil Practice Statutes",(Though they cannot be compared as to the workmanship of the authors). A great reason for this lack of success may be found in the issue of Miller's and McClain's codes about the same time. These works contained all the law and it was annotated to a certain degree, but not so highly as Davis' work.

Miller's Revised Code of Iowa.

Chapter 196, Laws of 1880, reads:—Section I. "Be it enacted by G.A. of State of Iowa, that the revised and annotated Code of Iowa prepared by William E. Miller, and to be published by Mills & Co. of Des Moines, Iowa, when so published and certified by Secretary of State to embrace the Code of '73 as amended by subsequent statutes, and the general and permanent statutes of the 15th, 16th, 17th, and 18th General Assemblies, shall be receivable in evidence in all the courts of this state, with like effect as if published by the state."

Approved March 27th, 1880. This act was passed by the legislature in order to favor the learned Ex-chief Justice Miller. His work of revising the Code of '73 and adding to it the statutes of general nature passed by the legislature since the enactment of that code, was then in process of compilation. This compilation of the law was to be annotated. That is to say, citations or references were to be made to the Supreme Court's decisions found in the 51 volumes of
Iowa Reports. These annotations were to contain the substance of the decisions construing the statutes. In fact, all construed statutes received as a footnote any citation that the editor considered in point. Such was Miller's "Revised Code of Iowa".

The entire Code of '73 was published in the same order and manner as it had been published by state authority, to which was added under the appropriate title, chapter, and section any general law relating to such chapter or section, either as an addition or modification of such statute or section. Whenever any such general law was added, the act from which it came or the laws from which it was taken, were referred to by special citation in parenthesis. The revising of the Code of '73 consisted of putting in brackets any and all parts that had been changed and thereby indicate what law was still in full force.

Some changes in the language of the Code '73 were made. These changes were legal and justifiable as they consisted in correcting errors that appeared on the printed page when compared to the original. Judge Miller issued two editions of this work— one in 1880, the other in 1886. Both editions were on the same general plan.

This being a private work and therefore does not contain the harmonized and corrected law in the codified sense, it deserves no further consideration than to say that it did not meet with the approval and recognition that was anticipated by the friends of this learned jurist. However, it should be borne in mind that the law as it appears in this and other private work of the state are merely compilations of or from the code and the succeeding statutes passed by the legislatures after the enactment of the code. Hence, all the session laws and the code together would give the law as well but not in such a handy and systematic form as these compilations do.
This work, by that great scholar and teacher, Emlin McClain, was first issued in 1830. Then re-issued in 1884 and again in 1888. Besides these complete editions, there were supplements issued in 1882 and 1892. The statutes of 1860 were issued without any authority whatsoever as far as the public was concerned. It consisted of all of the code '73 then in force together with all statutes of general public character, so placed and arranged in the "statutes" as to immediately follow the appropriate section to which it belonged; the same as if it had been enacted by legislative authority.

Wherever a section or part of a section had been repealed by a statute by any of the succeeding legislatures, the author deliberately incorporates the new statute into the place of the repealed part or parts. However, in each and every case, it must be noticed that references are made to this incorporation of the statute law into the code.

Such work as this makes the author's work a very fine compilation, but in no sense is it a code, any more so than the "Revised Code of Iowa" by Judge Miller was a code. It is a superior compilation and no more.

The author in his additions of statute law to the code of '73 must necessarily follow the sections as numbered in that work, consequently the arrangement throughout is the same plan as found in the code '73.

A new feature appears in this work which caught the eye, and commended itself to the lawyers, as being exceedingly ingenious and valuable, to wit: the manner of placing the citations of the Supreme Court immediately following the section to which it related. By so
doing, the statute law and case law were placed in close relationship and easily handled. In general, the citations were fine digests of the substance of the case decided.

Besides, the above good qualities to recommend it to the bar of Iowa, it possessed another equally important in many respects. The original code of '73 as found in the Secretary of State's office was used to correct the errors in the printed Code '73. A great many were found and references were made to such mistakes by appropriate notes.

The edition of 1884 of McClain's Annotated Statute was of the same general style as the edition of 1880. The edition of 1888, known as "McClain's Code" has a new feature in it. The section numbers of the Code of '73 are abandoned because of the enormous growth of the law, and new section numbers are placed at the beginning of each section, each number is followed by some catch word indicating the law to be found in the section, and immediately following the catch word is the old number, if any, of the code '73. Of course, such a division into sections, etc., had no authority save the good common sense of the author applied to the law as it seemed right and logical to him.

The Supplement of '92 followed the same general line as the edition of 1888. The only visible reason for calling this work "McClain's Code" is the fact that the section numbers have only the author's authority for their existence.

This work deserves special recognition by the bar and bench as being thorough and reliable evidence of the law. So well done was even the first edition that a special emergency act was passed by the 19th General Assembly making it receivable in evidence as the law of the State.