PREFACE.

By an Act of the General Assembly, assented to 9th December, 1858, provision was made for the election of three Commissioners, "to prepare for the people of Georgia a Code, which should, as near as practicable, embrace in a condensed form the Laws of Georgia, whether derived from the Common Law, the Constitutions, the Statutes of the State, the Decisions of the Supreme Court, or the Statutes of England, of force in this State."

David Irwin, Hon. Herschell V. Johnson, and Iverson L. Harris, were elected Commissioners, under the provisions of this Act. The last two named declining the position, His Excellency Governor Brown supplied the vacancies by the appointment of Thomas R. R. Cobb and Richard H. Clark, who were also elected by the Legislature at its session next after they were appointed.

Thus organized, the Commissioners commenced the work assigned them.

Looking alone to the words of the Act, the object contemplated by the Legislature swelled into a project, the magnitude of which would have deterred the boldest adventurer, if its accomplishment did not strike his mind as being utterly impossible. The Commissioners, however, did not believe that such a construction of the Act was a proper interpretation of the Legislative will, but construed it as requiring a Code which should embody the great fundamental principles of our jurisprudence, from whatsoever source derived, together with such Legislative enactments of the State as the wants and circumstances of our people had from time to time shown to be necessary and proper.

Such a Code will furnish all the information, on the subject of Law, required either by the citizen or the subordinate Magistrate.

Thus interpreting the Act of the Legislature prescribing their duties, the Commissioners entered upon the discharge of those duties, seeking not only to condense and arrange the verbose and somewhat chaotic mass of the Statutes of Georgia, but also to interweave therewith those great leading principles of jurisprudence necessary to fill out and make perfect the body of our laws, of which the Statutes constituted but disjointed parts.

In such an undertaking, the Commissioners could not hope for complete success; but to attain it as near as possible, they have spared neither painstaking or labor. How far they have succeeded in their effort, is submitted to the judgment of a generous profession and a generous public.

The Code is divided into four parts, as follows:

PART I.—THE POLITICAL AND PUBLIC ORGANIZATION OF THE STATE: Which treats of the Boundary, Divisions, Subdivisions of the State, and the Municipal Organization and Regulations thereof.

PART II .- THE CIVIL CODE: Which treats of Rights, Wrongs, and Remedies.

PART III.—THE CODE OF PRACTICE: Which treats of the Various Methods of Enforcing Rights and Redressing Wrongs, together with the Law of Pleading and Evidence and the Practice of the Courts.

PART IV.—Penal Laws: Which treats of Crimes and Misdemeanors, Trial and Punishment, and is subdivided into: First—Penal Code for the Trial and Punishment of white persons, to which is added a XVI. Division, containing the Proceedings in Preliminary Courts. Second—Laws for the Government of the Penitentiary. Third—Penal Code for Slaves and Free Persons of Color.

In the preparation of this work, the Commissioners have endeavored to arrange the various subjects under appropriate Titles, Chapters, Articles, and Sections, except the Penal Code, in which, for the purpose of convenient reference, the original Divisions have been retained.

The paragraphs are numbered from the beginning to the end of the book.

Thus prepared, the Code, after a thorough and laborious examination by a Legislative Committee, was submitted to the Legislature, and on the 19th of December, 1860, was "adopted as the Code of Georgia, to be of force and take effect on the 1st day of January, 1862."

The adopting statute further provided, that all laws and resolutions of a public and general character, passed at the session of the Legislature in the year 1860, and also the Laws of Georgia having reference to the city of Savannah, should be incorporated in and made part of the Code, and that the duties and powers of the Commissioners should be continued to that end, with authority to place the same in the Code, in proper form and connection, and to correct any conflicts that might be created thereby, with existing provisions.

On the 18th of March, 1861, a Convention of the People, then in session,

Resolved, That in the publication of the Code, it should be made to conform to the Government of the Confederate States, instead of the Government of the United States, from which Georgia had then but recently seceded, and also that the Constitution of the Confederate States should be published as part of the Code.

A compliance with these provisions required an almost entire revision of the Code, and added greatly to the labor, as well as to the difficulties in the way of perfect success.

It is but an act of justice to the Publisher to state that the typographical errors which appear in the book are mainly attributable to the frequent change of printers during the progress of its publication, resulting from the excited and unsettled state of our national affairs. No less than eleven printers, who were at one time

or another engaged in printing this Code, are now in the service of the Confederate States.

The errors alluded to have been corrected in an Errata, which will be found at the end of the Index, and to which the special attention of the reader is invited.

Many of the rules of the Supreme and Superior Courts, having been superseded by Legislative enactments and decisions of the Courts, and others being embodied in this Code under appropriate heads, it is believed that the rules of both Courts should undergo a revision by the proper authorities, and therefore they are omitted in this book.

As constant reference will be made to the Code, not only by the Bench and Bar of the State, but also by the various public officers and citizens who are not lawyers, the Commissioners have endeavored to make the Index copious and full, and to distribute the matter under as many heads as it could be appropriately placed, in order that what is sought for may be readily found.

The Commissioners submit to the people of Georgia the result of their labors, and ask for it a patient examination, sufficient at least to understand the plan, arrangement, and execution of the work; and if, after that, it be not approved by the public, they can but regret it.

REPORT OF THE COMMITTEE.

To the General Assembly of the State of Georgia:

The Committee appointed under the resolution of the last session of this General Assembly (assented to 16th Dec., 1859,) to meet the Commissioners appointed under an Act to provide for the Codification of the Laws of Georgia, (approved 19th of Dec., 1858,) at the capital in Milledgeville, at least twenty days before the meeting of this present session of the General Assembly, for the purpose of revising and fully examining said Code, respectfully report:

That they have discharged the duty devolved upon them by said resolution, and the following is the result of their investigations:

Referring to said Act of 9th of December, 1858, your Committee find that it was made the duty of the Commissioners thereby appointed, to prepare for the people of Georgia a Code which shall, as near as possible, embrace in a condensed form the Laws of Georgia, whether derived from the Common Law, the Constitution of the State, the Statutes of the State, the Decisions of the Supreme Court, or the Statutes of England, of force in this State.

With this enlarged and extensive chart of the powers and duties of said Commissioners before your Committee, and as directory, as well to compilation as in the revision and examination of said Code, they caused each and every section

thereof to be fully and carefully read before them; and they present as their unanimous conclusion, that said Commissioners have kept themselves fully and carefully within the pale of the powers and duties conferred.

The mingling together in condensed and intelligible form the Common and Statute Laws, Constitutional Provisions, and Court Decisions, and thus to place the whole body of all the Law within the reach of the people, was, in the opinion of your Committee, the great end aimed at by the Legislature, and this end has been kept in view, and, to every practicable and attainable extent, ably and

efficiently accomplished by the Commissioners.

A Code so entirely extensive in its aims and purposes as to define in intelligible form and language out of the body of the great system of the Common Law existing time whereof the memory of man runneth not to the contrary, mischiefs and rights, duties and obligations, and to present in intimate and close connection therewith Constitutional and Statutory Provisions, and the judicial exposition and construction thereof, for their redress and enforcement, is of rare, if not in the Code now presented, of original occurrence. Your Committee intend to say that it has not been before so extensively attempted, that the citizen should be referred to the whole embodiment of the Law in a single volume to be exactly informed what are his rights in any and every exigency, and what his remedies for their enforcement and protection. And it need hardly be added that to the large degree in which the offered Code accomplishes this great desideratum, it must and will commend itself to public approval and acceptance. As your Committee have said, in the discharge of the duties devolved upon them, they caused each and every section of the Code to be read before them, and at the option, or upon the suggestion of any one of its members, its sections were discussed, canvassed, and amended, enlarged and restricted by a vote of the majority; and your Committee will add, that the codifiers themselves, being present, with scarce a single exception, approved, acquiesced in, and adopted all such suggestions, alterations, modifications, enlargements, or restrictions, as your Committee thought proper to make.

Beyond what has been said, the limits of this report will not authorize your Committee to enlarge.

As "the result of their investigations," and in full view of the delicate responsibilities thereby incurred, especially if their further suggestions shall receive Legislative approval, they do not hesitate, with entire unanimity, to report that the Commissioners have ably, faithfully, and efficiently discharged the arduous duties imposed upon them, and with like unanimity recommend the Legislative sanction and adoption of that which they present as "The Code of Georgia."

In the further anxious discharge of their duties, the thoughts of your Committee have been necessarily turned to consider the mode in and by which this can be done

The importance of a knowledge of the contents of the Code to a satisfactory and well considered vote for its adoption by each member of the Legislature, has,

on the one hand, pressed strongly upon us, while on the other, the utter impossibility of canvassing and considering, within any reasonable period of time, the four thousand paragraphs embraced therein, has presented an obstacle almost, if not absolutely insurmountable.

The mere reading of the manuscript, to inform and enlighten the Legislative mind as to its provisions, would occupy more than half the time limited by the Constitution to a Legislative session. Such reading, accompanied by the unquestioned power to amend and discuss according to the varied opinions and policy of our three hundred members, it need hardly be said, would occupy, to say the very least, more than all the time thus limited.

In the opinion, then, of your Committee, to read without amendment and discussion, would be idle and useless waste of time and money; and to read, amend, and discuss, impracticable.

Entertaining these opinions, and seeking the best solution of the difficulties, your Committee were naturally led to refer to the precedents set and acted upon by your sister States under similar circumstances. So far as such precedents will sanction and justify the recommendation to which they are led, they have been pleased to find that, in almost every State, Revised Codes have been adopted by a simple Legislative act, such as your Committee offer with this report, and upon the action and report of a committee, leaving other considerations, amendments, and discussions, of course, to the power and wisdom of the Legislature after publication.

With the exception of Virginia, your Committee believe that the action of the States has been uniformly such as they now recommend. In that State the other policy was pursued. Each section of its Code was subjected to a thorough revision, and separate adoption by its whole Legislative Department. The result was that its session was extended to a period over six months, and, of course, at a very great cost to the State. Your Committee, from a partial and cursory examination of the Code of that State, will be permitted to add, in no censorious spirit, that the benefit of this course is not manifest in the results. Other Codes adopted upon the plan which your Committee feel constrained to suggest, compare most favorably with this Code of Virginia.

Your Committee believe that they could give satisfactory reasons for the opinion entertained, that the labor, time, and money which might be expended in a Legislative reading, revision, and examination of the Code, might be really detrimental, rather than beneficial, to its efficiency, harmony, and entire plan and structure; but the limits of a report forbid all such attempts.

If the Code now presented were a new system of jurisprudence, or had the Commissioners attempted to graft upon our system any new features extracted from others and unharmonious with our own, or even if alterations in a well defined public policy had been attempted, your Committee would have paused, hesitated to recommend the mode of adoption suggested, without at least calling the special attention of the Legislature to such new and essential changes.

But at an early stage of our revision and examination, the codifiers announced the leading principle by which they had attempted to guide their labors, and your Committee report the same prominent in all the amendments and changes made at their suggestion. This principle was, to attempt no change or alteration in any well defined rule of law which had received Legislative sanction or judicial exposition, and to add no principle or policy which had received the condemnation of the former, or was antagonistic to the settled decisions of the latter.

The prominent and leading power of change exercised in construction and revision has been to cut and unravel Gordian knots, resulting from conflicting decisions of the Courts; to reconcile actual and apparently discordant legislation, harmonizing all conflicts to what seemed to be settled and favored public policy; to remedy existing defects by wise and harmonious provisions; and to supply omissions which the practice and experience of the Courts had discovered and made manifest in existing legislation. In short, the great end and aim has been to reconcile, harmonize, render consistent, the body of the law, so as to give shape and order, system and efficiency, to the sometimes crude, and often ill expressed, sovereign will of the State.

A settled conviction on the mind of your Committee that the codifiers have, to a degree as complete and perfect as might reasonably be expected, accomplished these and like ends, has won for the Code, as an entirety, their cordial and unanimous approval. Your Committee will not conceal that some particular sections and provisions have not met this unanimous concurrence. When differences arose, careful and anxious consideration and discussion followed, and minorities did not hesitate to yield—all being satisfied that, as a whole, the Code was entitled to and should receive, as it does receive, their unanimous and unqualified approbation and recommendation.

Your Committee fully believe that such would be the result of any examina-

tion and revision by the Legislative Department.

Your Committee do not deem it inappropriate to their duties to add, that the proper printing and publication of the Code, if adopted, becomes a subject of much interest and importance. Its plan and structure accompanies this report. A reference thereto will render most manifest the necessity, in the publication, of rigidly adhering to the plan. The numerical order of its paragraphs, and its references in one title, section, or paragraph, to another, must be preserved. In the use and value of the Code, its Index becomes of the highest importance.

These, and like considerations and reflections, lead your Committee to suggest that none other than those who constructed the Code, who devised its plan, and are familiar with its details and manuscript, can so well superintend its publication and prepare its Index. Your Committee have further to add, that it is provided in the Code itself that it shall not take effect until the 1st of October, 1561, thus giving time for its publication.

It is further provided, and your Committee think wisely, to meet any insufficiency of the Code, that all questions not embraced or provided for therein, shall be

decided and settled by existing laws, and that the Code does not interfere with, or in any manner abrogate or repeal, local legislation.

If in the views thus presented by your Committee, they shall have the concurrence of the Legislature, they present as part of this report, a bill to adopt the Code, and a bill to provide for its publication.

All of which is respectfully submitted.

HINES HOLT,
DANL. S. PRINTUP,
W. W. PAINE,
Committee on part of Senate.
GEO. N. LESTER,
ISHAM S. FANNIN,
W. G. DELONY,
M. W. LEWIS,
N. BROYLES,
C. J. WILLIAMS,
Committee on part of House.

THE ACT ADOPTING THE CODE.

An Act to approve, adopt and make of force, in the State of Georgia, a Revised Code of Laws, prepared under the direction and by authority of the General Assembly thereof; and for other purposes therewith connected.

Section 1. The General Assembly of the State of Georgia do enact, That the Revised Code of Laws prepared under its authority, by Richard H. Clark, Thos. R. R. Cobb, and David Irwin, Esqs., and revised and fully examined by its committee, and recommended and reported for adoption (the manuscript whereof now being on file in the Executive Department), be, and the same is hereby, adopted as the Code of Georgia; to be of force and take effect on the first of January, 1862.

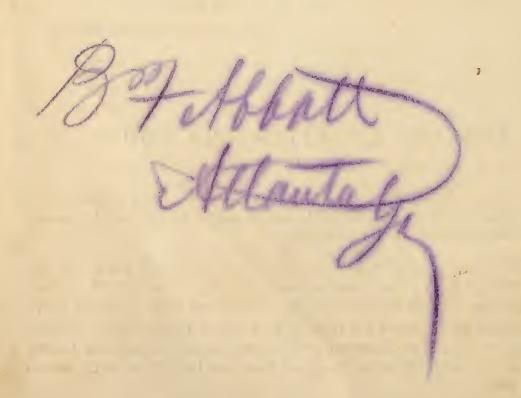
Provided, That the adoption of the Code shall not operate so as to repeal an Act entitled "An Act to define the liability of the husband for the debts of the wife, and to define the liability of the property received through the wife for the debts of the husband existing at the time of the marriage," approved 28th February, 1856; or to punish any Judge, Justice, or Minister, for joining in marriage any female under the age of twenty-one without the consent of her father or guardian.

Section 2. And be it further enacted, That all laws and resolutions of a public and general character passed at this present session of the General Assembly,

be incorporated in and made part of said Code; and that the duties and powers of the codifiers be continued to that end, with authority to place the same in proper and appropriate form and connection, and to correct any conflicts which may be created thereby with its existing provisions. And that the performance of the further duties by said codifiers, as required in this section, be submitted to the revisal, examination and approval of His Excellency the Governor, before the publication of said Code.

Section 3. Be it further enacted, That the laws of the State of Georgia, having reference to the city of Savannah, etc., as codified by order of the City Council of Savannah, by the City Attorney of Savannah, be and the same is hereby, declared and made a part of the Code of Georgia and the laws thereof—the manuscript copy whereof is now on file in the Executive Office.

Assented to Dec. 19th, 1860.



197-046both

PREFACE TO THE REVISED EDITION.

Mariles

THE late war and its results, having produced so many radical changes in the Constitution and Laws of Georgia, a revision of the Code of the State became a matter of necessity. Prompted by an appreciation of that necessity, as well as the suggestions of his friends, the undersigned entered upon the work of carefully revising said Code, so as to exclude therefrom all such parts as had been repealed or superseded, and to include all laws passed since the adoption of said Code which were of force at the adjournment of the General Assembly of 1866, thus making the Code conform to the 5th Clause of the 1st Section of the 5th Article of the Constitution of Georgia, adopted by the Convention of 1865. of the Code that have been repealed or superseded have been left out, and all laws still of force, that were never embodied in the Code, have been arranged under appropriate heads. The head-notes and sections have been rearranged and renumbered, and the new laws are included in brackets, with references to the authorities in which they may be found. A new and enlarged Index has been made, which, it is hoped, will enable any lawyer or citizen readily to find the law on any given subject. By resolution of the General Assembly, His Excellency Governor Jenkins appointed a committee, composed of Gen. Andrew J. Hansell, Col. Logan E. Bleckley, and Col. Nathaniel J. Hammond, to examine the work; and after a careful and elaborate examination, this committee of distinguished lawyers reported to His Excellency that the revision of the Code was thorough and accurate. The undersigned did not feel at liberty to change even the wording of the laws passed since the adoption of the Code, but embodied them just as they were enacted by the Legislature. The work has been tedious and difficult, and the undersigned does not claim that it is perfect; but, having done the very best that time, circumstances, and his official duties would allow, he places it before a generous profession and an indulgent people.

DAVID IRWIN.



