

LAWS OF THE DISTRICT OF COLUMBIA.

LETTER

FROM

RICHARD S. COXE,

TRANSMITTING

*Report of the Commissioner to digest and revise the laws of the District of Columbia.*

JANUARY 11, 1864.—Referred to the Committee for the District of Columbia, and ordered to be printed.

WASHINGTON, *December*, 1863.

SIR: In accordance with a provision in the act of Congress of March 3, 1863, I have the honor of transmitting through you to Congress my report as commissioner to digest and revise the laws of the District of Columbia. A duplicate of this report has been transmitted to the Senate.

Very respectfully, your obedient servant,

RICHARD S. COXE.

Hon. SCHUYLER COLFAX,

*Speaker, &c., &c., &c.*

*To the honorable the Senate and House of Representatives of the United States in Congress assembled:*

The undersigned respectfully represents to your honorable bodies that on the 3d day of March, 1863, an act of Congress was approved by the President entitled "An act to reorganize the courts of the District of Columbia, and for other purposes." By the 17th section of this act it was provided "that the President of the United States be, and he is hereby, authorized and empowered to appoint, by and with the advice and consent of the Senate, a suitable person, learned in the law, to revise and codify the laws of the District of Columbia." The 18th section of this statute further provided "that the person who shall be thus appointed shall receive ten dollars per day for his services while thus employed, and shall render a final report of his revisal and codification to Congress on or before the 1st day of January next."

On the evening of Saturday, the 20th June, I had the honor to receive a communication from the office of the Attorney General, transmitting to me a commission under the hand of the President, appointing me commissioner to perform the high and important duty required by this law.

This commission bears date the 19th June. On Monday, the 21st, I took the official oath prescribed by law, and on the same day transmitted to the honorable the Attorney General my acceptance of the appointment with which I had been thus honored, and forthwith proceeded to the execution of its duties.

In entering upon these duties it appeared to me that it was necessary to ascertain, as nearly as possible, their character, extent, and limitations; the time within which they were to be performed, the aids and appliances which I could command. The task to be executed was to "revise and codify the laws of the District of Columbia." This phraseology admitted of various interpretations. First, what were the laws thus to be revised and codified? Second, what did the terms "revise and codify" embrace?

The phrase, "the laws of the District of Columbia," in one sense, comprehends all the systems of jurisprudence in force within this territory. The word "codify" implies that the existing laws are to be reduced to a system. The word "revise" includes "to correct and amend," and in reference to such a subject this is its appropriate meaning.

Each of these forms of expression admitted of a larger or more restricted interpretation, and it was my earnest desire to give such a construction to them as, while on the one hand, I should not transcend the objects designed by Congress in the enactment of the law, I should not fall short of that design by a narrow interpretation. The brief period of ten months prescribed in the statute was narrowed down to six by the date of my commission, and the period of time allotted to me was necessarily to enter into the estimate.

First, what constitute, within the meaning of the statute, the "laws of the District of Columbia?"

Within this comparatively small territory, now limited to the county of Washington, covering a space of less dimensions than most of the counties in the several States of the Union, we are governed by as many systems of jurisprudence as prevail in any part of the United States.

To advert briefly to some of the most important of these departments: In common with the whole country, the Constitution of the United States constitutes our paramount law, overriding and controlling every other. This instrument, however, in its principal provisions, framed more than seventy years since, is susceptible, as all human language is, of a variety of interpretations, and has received constructions during that period of time, many of which, sanctioned by executive, legislative, and more especially by judicial authority, are recognized as equally sacred and unquestionable, as if incorporated in terms in the instrument itself. The Constitution, with these commentaries and expositions, while thus constituting the paramount law of the District of Columbia, attains that pre-eminence by being at the same time the paramount law of the entire Union. By the cession of the county of Washington, and the consequent legislation of Congress, the laws of the State of Maryland, as they existed in February, 1801, were continued in force. The power vested in Congress to exercise exclusive legislation over the District enlarged the authority of that body, so as to comprehend all which belonged to the national as well as state legislature. The system of laws thus derived from Maryland was itself various and complicated.

To employ the language of the late chief justice of this district, "The laws thus adopted consisted of so much of the common law of England as was applicable to the situation of this country; of the bill of rights, constitution, and statutes of Maryland, modified by the Constitution and laws of the United States, and of such of the English statutes as existed at the time of the

first emigration to Maryland, and which by experience had been found applicable to their local and other circumstances; and of such others as had been since made in England or Great Britain, and had been introduced, used, and practiced by the courts of that State."

It would be at once perceived that to revise and codify this entire system of law will necessarily involve an amount of labor, an extent of learning, and a profundity of judgment which could, under no circumstances, be expected from a single individual. A further illustration of this idea will be suggested in a subsequent part of this report.

On mature consideration of this branch of the subject it appeared to me, at the outset, necessary to examine and review what had been done since the organization of this District.

It was apparent at once, that by the single act of cession by Maryland, and the acceptance by Congress, the simple provision that the then existing laws of the ceding authority should continue in force, would be, in many respects, altogether nugatory. Laws without the judiciary to administer them or administrative power to execute them, are absolutely if not worse than useless. It became necessary to provide this machinery.

Many of the provisions of the then existing laws of Maryland were, even within the limits of that State, seen to be not susceptible of a literal execution, and much of it has since either lapsed into oblivion or has been positively repealed.

I have learned from one of the oldest and most intelligent of the first inhabitants of this District, which, it will be borne in mind, then comprehended the county of Alexandria ceded by Virginia, as well as the county of Washington ceded by Maryland, that a *quasi* convention was held by a number of the most intelligent and experienced citizens of the two counties prior to the passage of the act of Congress of February 27, 1801, in which this subject was discussed. From all the information which I have been able to collect, no records of this assemblage have been preserved, and as my informant—probably the last survivor of its members—has recently died, no reliable or circumstantial account of its proceedings will ever be disinterred. It is, however, more than probable that a considerable part of the provisions of the act of Congress just referred to of the 27th February, 1801, and other acts shortly passed, are due to the advice and recommendation of this informal but highly respectable assemblage.

The history of that day and the proceedings of Congress furnish proofs that the permanent location of the seat of government in this District was the subject of much difference of opinion, and was at length settled by a species of compromise. Partially yet reluctantly yielding to the opinions, arguments, and wishes of General Washington, it had been conceded that the seat of the national government should be located here. Still, the animosities and jealousies which had been manifested during the discussions which eventuated in this result had not altogether subsided. Many, in the hope that the settlement of the preliminary question would be only temporary, were unwilling to make permanent provisions which would indicate a final adjustment of the question.

Indeed, it was at an early period—in less than two years after the date of the act of Congress of February 27, 1801, to wit, on the 8th February, 1803—that a motion was made in the House of Representatives to re-cede the territory which had been so recently accepted and organized as the seat of the national government. This proposition was, after debate, negatived by a decided vote.

In the session of 1804 another effort was made to retrocede all that part of the District not comprehended within the boundaries of the city of Washington, which was also rejected.

In 1806, another effort was made to accomplish the same object, which proved equally abortive. In 1814, the occupation of the capital by a foreign hostile army revived the subject, and movements were made to change the locality of

the seat of government. A report of a committee of the House, amended by the casting vote of the Speaker, so as to declare that such removal was expedient, was actually adopted by a majority of one, and the bill, introduced in accordance with the resolution, negatived only by the small majority of nine votes. So recently as 1820, the effort was renewed, but encountered a still more decided defeat, the House having refused to entertain the proposition. Since that day the matter would seem to have been considered as forever settled, until the breaking out of the atrocious rebellion now raging, in the course of which, reiterated efforts have been made by the rebel armies to gain possession of the city of Washington, obviously and sometimes avowedly with no hope of any permanent occupation, but simply for the purpose of destroying the magnificent public works with which it is now embellished. Notwithstanding these menaces, and it may be added in some degree in consequence of and in defiance of them, the improvements in this city and District have augmented more rapidly and in larger proportions than any preceding years had witnessed.

The circumstances to which I have thus briefly adverted may account, at least to some extent, for the inconsiderable alterations in the laws of the District during the period of more than sixty years which have elapsed since Congress assumed jurisdiction over it. As will subsequently be shown, efforts have been made at improvement under legislative sanction, which, however, have so far proved abortive.

In the year 1800, the entire population of the county of Washington exceeded only by a small fraction 8,000, of which this city contained little more than 3,000. It is now estimated that the city alone numbers a population of more than 100,000, while the increase in the residue of the District has been proportionally large.

It is obvious that a system of laws, and the machinery by which these laws are to be administered, adequate to the exigencies of the year 1800, are wholly insufficient at the present day. Yet, with comparatively few amendments, we remain in this respect nearly where we stood at the commencement of this century.

While almost every State in the Union, many of which have advanced less rapidly in population than we have done, have accommodated their systems of jurisprudence to the wants of the times, we have substantially remained at our original standpoint.

While the munificence of Congress has embellished our city with magnificent structures and other public works, worthy of the nation for whose use they are designed, the important work of furnishing us with an improved code of laws, suitable to the wants of the people, has not been accomplished.

While placing a proper estimate upon what has been done, may it not be questioned whether what has been omitted might not be equally available in promoting the growth and prosperity of this District?

Can any one doubt that the Roman emperor under whose auspices the laws of that great empire were first codified, conferred a far more valuable donation upon mankind by that great work than his predecessor, who boasted that he had found Rome constructed of brick, and left it rebuilt with marble?

It would, however, be to present an imperfect, and therefore erroneous, statement of the case, were I to leave unnoticed what Congress has done in this direction. Reference has already been made to the informal and spontaneous assembly which occurred as early as when the cession of the territory and its acceptance by Congress was still under consideration. All that is now known or remembered of the proceedings of that meeting is a vague and indistinct tradition that it influenced to some, but unknown, extent the legislation of Congress.

When, after the termination of the war with Great Britain, the question of the removal of the seat of government, and the re-cession of the District, appeared

to be settled, the subject of establishing a system of jurisprudence to meet the exigencies of the times attracted the attention of Congress. On the 29th April, 1816, an act was passed entitled "An act authorizing the judges of the circuit court, and the attorney for the District of Columbia, to prepare a code of jurisprudence for said District." The task to be performed was very comprehensive. The judges and attorney, consisting of four persons, were not limited as to the time to be employed in its execution. The report to Congress, dated November 19, 1818, is signed only by Judge Cranch, and indicates that what was done was accomplished by himself alone. It would appear from this report that this learned and labor-loving judge had, during a period of two years and a half, accomplished little, if anything, more than a codification of the statute law, leaving the other portions of what he himself enumerates as part of the system of jurisprudence untouched. This report is indicative of the great labor and learning which characterized the author, but it is wholly defective in arrangement. The subjects seem to have been taken up indiscriminately, and those which appear to be the most closely allied are scattered throughout the volume. This report fills 450 octavo pages, with an index enlarging it to 574 pages. It was never acted upon by Congress, and unless it may prove useful in aiding some successor in the same undertaking, the labor and expense which it cost were altogether wasted.

At the first session of the 21st Congress an interesting report was made by a committee of the House of Representatives on the subject of the laws of the District, containing valuable information and many useful suggestions.

It was probably in consequence of this report that in the year 1832 a joint committee of the two houses was appointed to prepare and report a system of laws, civil and criminal, for the District of Columbia. Several gentlemen, distinguished for their legal attainments and professional experience, were members of this committee, some of whom did me the honor to confer with me as to the execution of the task imposed upon them. On the 14th of February, 1833, Mr. Chambers, of Maryland, in the Senate, and Mr. Wilde, of Georgia, in the House of Representatives, presented the report of the proceedings of this committee. It occupies, with its index, more than 820 pages octavo, and manifests great industry in its preparation.

I beg leave here to quote a portion of the report of this committee strikingly applicable to present circumstances:

"They have executed the duty assigned to them by preparing a system of law, civil and criminal, for the District of Columbia, which is herewith submitted. In announcing the performance of such a task within so short a period, and under circumstances so unfavorable, the committee may be permitted to offer some observations on the work itself, the mode in which it has been done, and their reasons for so doing it. Without this explanation they might be exposed to the reproach of having assumed credit which they do not deserve, or incurred a responsibility which they disclaim."

"Their first occupation when assembled was an attempt to estimate the extent and character of the undertaking, the time and aid which they could command: in a word, what ought to be expected of them, and the possibility of effecting it. In pursuing this investigation it became indispensable to ascertain the true import of the resolution under which they were convened, that it might be executed as far as practicable in sense and spirit. It was obvious that if Congress contemplated the preparation of an entire code, civil and criminal—a complete digest of common and statute law and equity, comprehending all that relates to persons and property, rights and remedies, crimes and punishments—years not months should have been allowed to complete it."

"The committee did not feel at liberty to understand the resolution as commanding an impossibility, nor could they persuade themselves that Congress designed hereafter to extend the term of their labors. The limitation of time

was explicit and peremptory. The 'system' required to be prepared was therefore not a perfect code, but something very different, and the committee of necessity sought another and different meaning for the terms employed by Congress, deducible from the prior proceedings of that body on the same subject, from the wants and wishes of the people of the District, the evils of their actual condition, and the reasoning on which the resolution had been introduced, supported, and adopted."

The whole of this preliminary report of the committee merits the consideration of Congress in reference to this interesting topic. This document, upon which so much time, labor, and talent had been bestowed, was presented to Congress accompanied with a bill designed to effect some of its purposes, but at so late a period of the session that no action was had upon it, and it has never since been taken up for consideration.

More recently, by an act passed March 3, 1855, another effort was made "to improve the laws of the District of Columbia, and to codify the same." Under this act two commissioners were appointed—Robert Ould and William B. B. Cross.

By the provisions of the statute creating this commission their report was required to be submitted to the consideration of the people of the District. It was accordingly so submitted, and its adoption negatived by a decided majority.

The report of these commissioners, dated November, 1857, more than two years and a half after the date of the law under which they acted, thus proved another abortion. The imperfections in our system of jurisprudence became daily more manifest, and while the neighboring States, Maryland and Virginia, had applied themselves at a heavy expense to remodel and improve their respective codes, while most of the other States in the Union were pursuing the same course, the laws of the District, to almost every purpose of local interest, remained stationary. Few alterations were made, and of some of them the expediency was at least questionable. That portion of our community which most distinctly perceived and were the most aggrieved by the imperfections and deficiencies in our system of laws, had no means of concentrating their views or uniting in the representation of them to Congress.

The important national interests over which that body had the superintendence, and which commanded so much of its time and attention, precluded almost necessarily attention to the concerns of this small territory, while the want of the means of combined operations reduced all our efforts to individual representations of these defects, and their appropriate remedies to merely individual action. On the 20th of May, 1862, an act was passed entitled "An act to provide for the codification and revision of the laws of the District of Columbia." By this act the President was authorized and empowered to appoint, by and with the advice and consent of the Senate, three suitable persons, learned in the law, to execute the work. I have recently been informed that the President transmitted to the Senate the nominations thus authorized, and that he did me the honor to place me as one of them. No action was taken by the Senate on the subject. A clause in the 1st section of the act of July 16, 1862, provided "that for the pay of a commissioner and incidental expenses under the 'act for the codification and revision of the laws of the District of Columbia,'" &c., the sum of three thousand dollars was appropriated; but it repealed so much of the preceding statute as authorized the appointment of more than one commissioner.

The immediate adjournment of Congress prevented any step in the execution of this enactment. Finally, by the 17th and 18th sections of the act of March 3, 1863, entitled "An act to reorganize the courts in the District of Columbia, and for other purposes," it is enacted that the President of the United States be, and he is hereby, authorized and empowered to appoint, by and with the advice and consent of the Senate, a suitable person, learned in the law, to revise

and codify the laws of the District of Columbia, and that the person who shall be thus appointed shall receive ten dollars per day for his services, and shall render a final report of his revisal and codification to Congress on or before the first day of January next." This is the law under which I received my commission, on the 20th of June last. This law created the office, indicated the duties to be performed, and prescribed the time within which a final report is to be made. While fixing the compensation to be paid to the person for his services, it makes no provision, as did the act of July, 1862, for incidental expenses, nor indeed does it contain any specific appropriation for the payment of the per diem allowance.

On assuming the office with which I was then honored, I felt, as did the joint committee of 1833, that the first thing to be done "was to attempt to estimate the extent and character of the undertaking, the time and aid which I could command; in a word, what would be expected, and the possibility of effecting it."

A review of what had been done by those who had preceded me in the same work to which I have already adverted, at once made it apparent, that, were I to restrict myself even within the limits which they had occupied, the manual labor of copying, if the material was fully prepared and arranged, could not be accomplished within the time prescribed by the act of Congress by a single individual. As the committee in 1833 say, I "did not feel at liberty to understand the resolution (law) as commanding an impossibility."

Having received my commission through the hands of the Attorney General, I addressed a communication to him, inquiring whether an allowance would be made me for the incidental expenses necessarily attending the execution of the work. That gentleman declined expressing any opinion upon that point of an official character, but intimated that the proper department to which my inquiry should be addressed was the Treasury, and that if the Secretary of the Treasury would submit the question to him, he would promptly respond. In accordance with this suggestion, I did bring the subject before the honorable Secretary of the Treasury, but have not to this day received any response. Although advised by high authority to go so far as at once to organize an effective clerical force to perform the manual labor, and rely upon the liberality of Congress to compensate me, I was unwilling to assume such a responsibility.

Under these circumstances, I availed myself of the best advice which I could procure. The answer received from the learned Attorney General precluded me from asking his opinion, which, could I have procured, would have governed my course.

But those with whom I could consult were unanimous in recommending that, inasmuch as the work contemplated by Congress, even under the narrowest construction, could not by any possibility be accomplished within the brief period prescribed, but that what Congress had done indicated that that body had perceived the necessity of a revisal and codification of the laws of the District, and recognized the claims of its citizens to have such a work executed, it was incumbent upon me, having assumed the task, to determine upon the manner in which it should be accomplished, and submit the entire subject to Congress for its further action.

Yielding to this unanimous opinion, and the constantly expressed wish of such of my fellow-citizens as have communicated with me on the subject, (and these have been numerous,) I have, after mature consideration and reflection, arranged a plan of procedure, which I beg leave respectfully to present to Congress with all practicable brevity.

Limiting the meaning of the phrase, the laws of the District of Columbia in general, to those which are of a local character, my work has been to arrange the existing laws under distinct and appropriate heads, to amend the phraseology so as to be more precisely accommodated to the judicial

interpretation they have received, to the functionaries existing under our institutions, and to provide such amendments as the progress of time appears to demand. Reference is then to be made to the several codes and digests which in so many of the States have been prepared by able and accomplished jurists, adopted by their legislatures, and found by experience to be of inestimable value, and drawing from such sources such hints and suggestions as seemed applicable to our situation and circumstances to introduce much which is new, and to modify much that is old.

I deem it advisable in this to avoid all unnecessary and uncalled for innovation; to retain, without alteration, all which our own experience has approved. But, keeping in view these general ideas, I think it especially advisable to adopt freely and liberally, such amendments and improvements as have been incorporated in the recent codes of Maryland and Virginia. This has been recommended to my judgment by various considerations. In the first instance, it would be highly desirable that the laws, especially those which regulate property, its acquisition by conveyance, devise, descent, or otherwise, should be as uniform as practicable throughout the Union. Some of our systems of jurisprudence—for example, nearly the entire commercial law—have already attained this uniformity, and the advantages of it are universally recognized. The laws which govern real property, the forms of deeds and devises, of acknowledgments, and proofs, &c., are lamentably diverse, and in my professional experience I have witnessed instances in which extreme hardship and gross injustice have been the consequences of such diversity. Deeds and wills executed with all the formalities prescribed by the law where the grantor or testator resided have proved utterly inoperative where the property which was the subject of them was located. This uniformity is especially desirable in States or territories which are contiguous, and where the inhabitants are in constant intercommunication in their business and social intercourse. It not unfrequently happens that the same individual is the owner of property in more than one State; indeed, the same farm or plantation may extend across the lines which separate distinct jurisdictions. In such cases the importance of having one uniform law of property is obvious and manifest.

These considerations induce me in introducing amendments into the projected code to give a preference, other things being equal, to the provisions which have been introduced and found useful in the adjacent States of Maryland and Virginia, rather than those which have been adopted and sanctioned by experience in more remote portions of the Union.

In the course of the brief period which has elapsed since I entered upon the discharge of the important duty confided to me, I have received communications from remote places containing suggestions, sometimes almost amounting to proffers of aid in my work; far more numerous have been the visits which I have received, and the representations made by my fellow-citizens of the District of all classes, and engaged in different occupations, each suggesting some imperfection or deficiency in the law which immediately concerned himself or his particular department of business.

When, however, recognizing the grounds of their respective complaints, I have asked these individuals to intimate to me the remedies they would propose for the evils of which they complain, stating that it is impossible for any one man to understand all the requirements of all classes of society, all the industrial occupations of a large community, and that I should be obliged to every man who would give me the benefit of his experience and advice; though this has been constantly promised, in no one instance have I received this assistance.

It would be idle for me to flatter myself with the hope that in the view I have taken of this subject, or in the manner in which the design of Congress could best be accomplished, I shall meet with universal approbation and concurrence of opinion. Only a choice of difficulties was left to me. If it had been within

the compass of possibility to construct and execute such a system as Lord Bacon, in his two tracts upon the subject of compiling, amending, and digesting the laws of England, had contemplated and projected, no doubt can be entertained of its great importance and value.

Such a work would, however, demand the labor of years, and could scarcely be accomplished in a long lifetime, by any one individual, whatever aids and appliances he might be able to command. Left entirely to my own judgment in determining the course to be adopted, to my own unassisted labors, I have exercised my discretion and employed my abilities in the manner which appeared to me the most judicious.

The importance of the subject has grown at every successive view of it which has been taken. The defects in our code of laws have become more obvious at every step, and the deficiencies brought to my notice by numbers of my fellow citizens, in all classes of the community and engaged in a variety of occupations, far exceed in extent what could possibly occur to any one individual.

Whosoever shall undertake to digest and revise the laws of the District of Columbia, even within the narrowest interpretation of this language, should be enabled to summon to his aid and advise with individuals experienced in every department of society, and in all the diversified employments of life. He should be furnished with competent assistants to aid in the essential manual labor; and if it be deemed necessary to prescribe a limit to the time within which the work is to be executed, that should be measured by the other considerations to which I have adverted.

In thus presenting the subject to the consideration of Congress, I have endeavored, as briefly as possible, to present some of the prominent points which are connected with it. Other views, scarcely less important, have been maturely weighed, and more numerous illustrations of those to which reference has been made have occupied my mind. Anxious, however, to abridge, as far as practicable, this report, it may be considered rather as a synopsis of the case as it now stands than as a full exposition of it.

If it shall please Congress to adopt the suggestions I have made, and provide for the consummation of a work so desirable to almost every member of this community, then what I have accomplished will not have been in vain.

Should, however, Congress in its wisdom deem it expedient to proceed no further in the matter, or postpone it indefinitely, it will afford me some consolation that my six months' labor has occasioned no other expense to the government than my compensation of ten dollars per diem, as every other which has been incurred, as well as the labor employed, has been exclusively my own loss.

All which is most respectfully submitted.

RICHARD S. COXE,  
*Commissioner, &c., &c.*

WASHINGTON, *December*, 1863.

