THE

PENAL CODE

OF

CALIFORNIA.

ANNOTATED BY
CREED HAYMOND AND JOHN C. BURCH,
of the
CALIFORNIA CODE COMMISSION.

FIRST EDITION.

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DEDICATION.

TO THE HONORABLE WILLIAM T. WALLACE.

In appreciation of the Supreme Court of the State of California, as a token of the high appreciation in which are held his legal attainments and scholarly attributes, this Volume is respectfully inscribed, by the AUTHORS.
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PREFACE.

In presenting this edition of the Annotated Penal Code of California to the public the authors have little to say which was left unsaid in the prefaces to the Annotated Civil and Political Codes. We have endeavored to make this a useful book to the profession—prosecuting or defending—as well as to the Courts and officers of the law. As all enactments are to be found in this Code which prescribe punishments for violations of the laws contained in the other Codes, frequent references are made to them, especially the Political. Heretofore it was the practice of the legislative department to declare a public or private right, and in the same Act to affix a penalty for its violation—and so invariably with the declaration of wrongs. Under the system here adopted all the penal clauses of the law are congregated together, under appropriate headings, in the Penal Code, whilst the laws creating or recognizing “rights” are to be found in the Political or Civil Code, and sometimes in the Code of Civil Procedure; so, too, is it in occasional instances with the declaration or description of wrongs or injuries which are punishable criminally. It is to be hoped that this system and classification may never be departed from. In justice to the work we make an extract from the report of the Advisory Committee:

“The Advisory Committee on the Revision of the Laws have the honor to submit to you, and through you to the Legislature, their report upon the Penal Code.

“They have made a careful and critical examination of the Penal Code prepared by the Revision Commission. In doing so they have compared it, section by section, with our existing laws, and also with the Criminal Codes of some of the most
populous States. In the performance of this labor they have constantly consulted with the Commissioners and suggested such amendments as they deemed advisable.

"The Act of April fourth, eighteen hundred and seventy, providing for a Commission for the Revision of the Laws, requires the Commissioners to 'correct verbal errors and omissions, and to suggest such improvements as will introduce precision and clearness into the wording of the statutes,' and 'to recommend all such enactments as shall, in the judgment of the Commission, be necessary to supply the defects of, and give completeness to, the existing legislation of the State.'

"In the preparation of the Penal Code, the Commissioners have strictly followed the direction of the law. While many sections of existing laws have been redrawn to correct verbal errors and to give them precision and clearness, their spirit and substance have, in all cases, been preserved. In a few instances terms of imprisonment have been changed, but such changes are confined to cases where there was an inequality in the period of punishment between crimes of a higher and lower grade. Many new sections have been introduced, but these were necessary to 'supply the defects of and give completeness to the existing legislation of the State.'

"We believe that the bill for an Act to establish a Penal Code, as now prepared by the Commissioners, should be enacted into a law. No inconvenience can arise from its adoption, as full provision has been made for the punishment of offenses committed before it takes effect.

"Our thanks are due to the Commissioners for the courtesy they have extended to us, and for the readiness they have at all times manifested to aid us in our investigations. In the preparation of this Code they have earned and deserve the thanks of the legal profession and of the State."

We also call attention to the report of the Legislative Committee, which concludes as follows:

"That it is exceedingly desirable to have a complete and harmonious system of laws which can easily be understood by all the citizens of the State, no one will deny. Your commit-
PREFACE.

I believe that this has been accomplished so far as the same is practicable, and therefore have reported the bill for an Act to establish a Penal Code to the Senate, and recommend to the Legislature that it pass. The States of Kansas, Louisiana, Maryland, Massachusetts, Minnesota, Missouri, New Hampshire, and New Jersey, have already adopted a system of revised laws or codes. The States of Florida, Georgia, Illinois, Iowa, Michigan, Mississippi, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, West Virginia, and Wisconsin at the present time have employed skilled lawyers to revise or codify their laws. The necessity that exists for the performance of this work has been appreciated everywhere, and California should be, as it ever has been heretofore, among the first to take any step that tends toward improvement.

"Your committee believe that the system of law as embodied in the Penal Code prepared by the Revision Commission is more perfect than that prepared by any other State, and it would be well for the honor of California if by the action of the present Legislature it should adopt this great work, thus setting an example which will be speedily followed by all her sister States, adding new laurels to the fame which she has already so justly acquired, and at once becoming, as has been remarked, not only a lawgiver to the thousands within her borders, but to the millions who are to succeed them, and by the force of her example to not only the vast population of the whole Pacific Coast, but to the millions of citizens of other States, who will soon follow in her footsteps. Then, when the laws of all the States in this great Federation are harmonious and in sympathy with each other, California, having made the first advance toward this high aim, will be entitled to the first post of honor and to the gratitude of the whole country."

The language of these two reports cannot be mistaken; they favor the system which these Codes present. Their fair trial is solicited.

CREED HAYMOND,
JOHN C. BURCH.

SACRAMENTO CITY, October 10th, 1872.