though we are now striving to revise the public general statutes of Upper and Lower, and of Canada, we must not forget that these are only drops in the bucket compared with the unwritten law of England which is our law, and of the statute law of England before 1792, which is also our law. True the legislature of New York, the laws of which State are as old, as widely scattered, in a word as stupendous as ours, is about to *attempt* the codification of its laws. We know by experience that it is not every attempt to do a thing which succeeds, and moreover we believe that no attempt to consolidate the whole law of New York, including so much of the common law of England as applies to that State will ever be really effectual. Let us turn to the experience of the past. Look at the code of Justinian and the code of Napoleon to each of which every stickler for codification refers us. Have these codes succeeded? Did the former reduce the laws of the Roman Empire to a bulk so small and to language so clear that every man might understand them, or that Law Reports, Treatises, or Compendiums were all swept away never again to return? Has the code Napoleon effected these things?

Without doubt the code of Justinian as far as it goes is an admirable abridgment of law; but even in the country where it originated, it did not answer the purpose of its creation. It was never more than what our common law now is, the basis of subsequent law making. Fresh codification afterwards became necessary at Constantinople and a new Digest of the laws called "The Basilica" was established. Such must always be the case so long as man lacks the attributes of the Divinity. He sees little by little as new circumstances surround him, and according as new wants arise, endeavors to provide for them. General law must adapt itself to the want of the age in which it is enacted, and cannot be made a rule of conduct for all ages to come. A few principles of moral ethics may be proclaimed, and like the decalogue, may be engraved on stone, but these cannot be applied as a rule for all cases, all circumstances, all disputes in human affairs. These principles may be made the heart of the living body—the seat of life—but the body itself must be allowed *to grow*. So human law must be open to amendment—and what is more—amended as the daily, hourly demands for change present themselves. We cannot be brought to look upon any code as the perfection of wisdom. We can only view it as a great consolidated statute open to doubt in its construction, and susceptible of amendment like any other statute of less dimensions. More than this, we view it as a dangerous experiment—dangerous because it removes the landmarks of interpretation exhibited in the growth of successive statutes. We go so far as to contend that obscurity and uncertainty are more likely to exist where there is a code than where there is not.

Let us turn to the much boasted Code Napoleon. The laws of Napoleon are not embraced in a single code. There is the Code Civil, the Code de Procédure Civile, the Code de Commerce, the Code d'Instruction Criminelle, and the Code Pénal. But even all these taken together do not contain the *whole* law of France. Portions such as the Code Forestier have been since codified, and there is to this day a great mass of law not at all codified. All laws passed by the Legislature for the time being are published in the "Bulletin des Lois," a work of great size, yearly increasing. Nay more, the codes have not been spared. Stripped of the lion's skin they have been boldly cut up and amended like less pretentious pieces of legislation. Then look at the text-books and commentaries which these codes have caused to be published? We have Locré in thirty-one volumes, Touillier and Traplong in nearly fifty volumes, Pailliet in several volumes, and those of D'Auvilliers, Teulet, and of many other writers too numerous to mention. Why! here on codes scarcely half a century old, we have more law text books than there are to be found on the whole common law of England! Add to these the "Bulletin des Lois," already mentioned, a publication which rivals our Statutes at large, and then point out the advantages of codification!

Though we deem consolidation in some respects practicable, and in many respects desirable, we look upon codification, applied to English law, as impracticable and objectionable even if practicable. Let the body of our law, like our constitution, remain unwritten—except by the finger of God in the hearts of the people, and when necessary for the public good, let there be so far as necessary, the addition of statute or written law admitting upon its face the imperfection of human wisdom, manifesting the inferiority of human, compared with divine laws, and honestly confessing the humility of the human law giver, however able, however industrious, however far-seeing when compared with the Divine law giver of the world.

TRIAL BY JURY IN CIVIL CASES.

Of late much attention has been given by thinking men to the subject of this article. There is a feeling more or less strong that the prevailing system of trial by jury in civil cases in Upper Canada is not perfection. Accompanying this feeling there is, as there ought to be, a desire for substantial improvement.

When in April last we expressed our views at great length on trial by jury, we had a presentiment that something would be essayed during the present session of the legislature towards amending the law on this important head of jurisprudence. The honour of making the attempt