

DIARY FOR JULY.

1. Thursday Sittings Heli and Devises Commission. Long Vacation com.
4. SUNDAY 8th Sunday after Trinity.
5. Monday Co. Court Term com and sittings Heli and Devises Commission.
10. Saturday Co. Court Term and sittings ends.
11. SUNDAY 9th Sunday after Trinity.
12. Monday Legislative School Grant to be distributed.
17. Saturday Sittings of Heli and Devises commission ends.
18. SUNDAY 10th Sunday after Trinity.
25. SUNDAY 17th Sunday after Trinity.

"TO CORRESPONDENTS"—See Last Page.

The Upper Canada Law Journal.

JULY, 1858.

CONSOLIDATION AND CODIFICATION.

In every community individuals may be found who live and die yearning for simplicity in law, and yet law instead of becoming simple, as if to spite theorists, becomes more complex.

It would be a blessing indeed if our law were such that every man could carry it in his pocket. It would be a further blessing if it were all not only reduced to writing within a small compass, but so written that no one could mistake its meaning. These are lofty aspirations; but known to every man of common sense, to be as insane as they are lofty. Easier far would it be, to build a castle in the air for the habitation of man, than to reduce human laws to the simplicity and brevity of a spelling-book.

Assuming ideas such as these to be chimerical in the extreme, it must still be admitted that laws may be in some degree simplified. The law of England is the accumulated wisdom of ages. It is the product of many centuries. It consists, as every one knows, of the unwritten or common law, and the written or statute law. The unwritten or common law, though to the sight unseen, is of much greater importance than the written or statute law, though contained in scores of weighty tomes. It is the basis of all written law—the groundwork of all legislation—the keystone of an Englishman's liberty. It resembles the constitution of England—which is unwritten. It enjoys an elasticity and an omnipotency that no code or form of words can ever embody. To reduce the common law within the covers of a single volume or of many volumes is, we apprehend, a work beyond the power of any finite being.

But there is a class who although not demanding codification of the common law, ask for codification of the statute law. This, though more reasonable is scarcely less practicable. We lament with the most constant grievance-monger, the mighty maze of statute law with which England abounds. We believe that much of it is dead matter, which might, with advantage, be separated from the living

body of law. We are sensible that much of it is tautology and useless repetition. We acknowledge that it deserves much of the obloquy and the ridicule that is cast upon it. When we have, as Sheridan if we mistake not, said, a bill imposing a tax,—a bill to amend the bill that imposed the tax,—a bill to explain the bill that amended the bill that imposed the tax,—a bill to remedy the defects of the bill that explained the bill that amended the bill that imposed the tax; and such measures ad infinitum, it is time to reduce and to consolidate. Then let there be a reduction by expurgation. Let the product be well consolidated. Nay if possible, let the subject matter be classified. But each step even of this process, is attended with immense difficulty. More than twenty years since, commissioners were in England appointed to consolidate the statute law of the kingdom, and some years afterwards, having effected little or no good, were sent about their business. Plans the most magnificent,—rockets the most brilliant,—have from time to time fallen mere sticks when subjected to the test of actual experience. Putting aside the lofty visions of Bentham we need go no further than the scheme of Lord Cranworth, announced on the 14th February, 1853. He on that day announced that he intended to consolidate the statute law. He explained the manner in which he proposed to carry his intention into effect. First, to expunge from the statute book every enactment which had either expired, become obsolete or been repealed. Secondly, to classify the existing enactments according to the particular subjects to which they related. Thirdly, to consolidate into single acts the *disjecta membra* thus classified. Fourthly, to devise some machinery for correcting the errors of future legislation. A board of five commissioners was forthwith appointed and maintained at a great expense to the kingdom, and to this day has done absolutely nothing in the realization of the scheme. Here was a scheme apparently feasible,—within the comprehension of all men, whether matter of fact or matter of fiction, and yet after five years sitting there is every probability of the work being abandoned!

If such be the difficulty of consolidating the statute law how much more would be the difficulty of consolidating the common and statute law—how much more still the difficulty of *codifying* the whole law of Great Britain? These questions are not of less interest to us than to the parent country. The laws of England, that is, statute and common law relative to property and civil rights existing on 15th Oct. 1792, were made the laws of Upper Canada. Previously the criminal laws of England became the laws of Canada. We are then as much interested as the people of England in all attempts made to simplify English laws. But, though we did in 1841 revise the statutes of Upper Canada, and