ae we must, that the compilation of Comyn has become a thing of the past, and that—as Sir James Wilde says—"the structure of our existing law has been raised chiefly within the last century and a half." It is rumoured that Lord Cranworth and his colleagues contemplate the nomination of a phalanx of jurists to work the Commission; an operative staff, composed, not of Ulpians or Tribonians, but of industrious lawyers, reasonably skilled in their profession, reasonably addicted to labour, and—what is not less material—reasonably trained to the austerities of legal composition. These, acting in concert, but with a distribution of duty appropriate to each, will be subject to the direction, supervision, and correction of a board, having in its number some of the first lawyers that England can produce. We feel quite confident that a work prepared under such auspices *must* succeed; and if we had any doubts on the subject. the admirable report already issued would have dispelled them. This Commission will, in fact, realize the dream of Bacon. It will, as he proposed, frame a digest—not a code; although a code may be its fruit when the digest is complete.

In the posthumous continuation of Austin's Jurisprudence (ably edited by his lamented widow, who has recently followed her distinguished husband), what he contemplated and advocated at the outset was "merely a re-expression of existing law, with apt divisions and sub-divisions;" in fact neither more nor less than a digest, which, however, he thinks "will prepare the way for a code." He proposes to extend the work to Scotland and to Ireland. To overlook these countries, he conceives, would be a slight upon both. And we quite agree.

A systematic digest drawn up after profound deliberation, though not binding, would be of instant value to the practising lawyer, and even to the judges. It would give confidence to legal opinions, and prevent litigation in many cases where counsel, after balancing discordant authorities, advise dubiously a suit, or a defence.

The digest would address itself to all classes. It might even be sold at a moderate profit, which would contribute to defray the expense of the commission; a consideration not undeserving of attention in this age of economy. The publication would be by instalments, to give evidence of progress and quality; each branch of the law being easily capable of severance from the rest. Every professional person, and we incline to think, a large portion of the educated community, would desire to possess themselves of an exposition, revised, corrected and sanctioned by the first legal intellects of the country; setting forth, in a readable form, the rights and liabilities of the people, and enabling them to comprehend that which, whether they comprehend or not, they are bound to obey.

We have said nothing of Cruise's admirable digest, because it is confined to real property. We have also been silent as to the *Law Journal* digest, which, commencing in 1820, and continued quinquennially, has proved of the greatest use to the profession. Its birth put an end to all renewals of Comyn. It will be of the greatest service to the Royal Commission.

Three months before his death, Lord Lyndhurst, in a letter to the writer of this article (written in his Lordship's beautiful hand), says, "I have never publicly expressed an opinion upon the subject of codification; but I think the utmost that can be done is to form a digest."

Lincoln's Inn, October, 1867.

ONTARIO REPORTS.

COMMON LAW CHAMBERS.

(Reported by Henry O'Brien, Esq., *Barrister-at-Law, Reporter in Practice Court and Chambers.)*

Bell v. Cuff.

Ejectment—Staying proceedings until costs of former actions paid—Same "cause of action"—Vexatious suits.

Plaintiff in ejectment claimed to recover in a second action the same land as he had sued for in a former action, and under a forfeiture in the same lease, but the forfeiture on which the second action was brought was a new forfeiture, and had been incurred long subsequent to the obtaining judgment in the prior action. On an application by the defendant to stay proceedings until the plaintiff should pay the costs of the first judgment and execution,

Held, That as the second action was not brought for the same cause as the first the application must be refused.

Quære, If it were shewn that the question involved in the second suit had been involved in and could have been tried by the first, and that the second suit was brought vexatiously.

[Chambers, October 7, 1867.]

Durand applied to stay proceedings in this action until the plaintiff should pay the costs of two judgments and executions in ejectment commenced by him in 1866, against the defendant and his then tenant for the same cause of action substantially as the present action; and why, if such costs were not paid in one month, the defendant should not be at liberty to enter judgment of *non pros.* in this action.

Osler shewed cause. The fact of the plaintiff having sued the defendant in the former action is not denied, nor that it was brought to recover the same land as is now sued for, upon an alleged forfeiture of the same lease now set out in the notice of claim; but this action is not brought for the same forfeiture for which the prior action was brought, but for a further and fresh forfeiture incurred long subsequent to the obtaining judgment in the said prior action, and the defendant well knows that to be the case.

This action is not founded on the same title as the one previously in question. *Doe Henry* v. *Gustard*, 4 M. & G. 987, shows that a new action may be brought for a new forfeiture, and the action will not be stayed although a former action may be still pending upon the same title; and *Doe Bailey* v. *Bennett*, 9 Dowl. 1012, decides that it is a good answer by the plaintiff that he is not suing on the same title as in the previous action, and he need not state what that title is, and for these reasons the 76th section of the Ejectment Act does not apply.