

FRENCH CODES AND ENGLISH DIGESTS.

the highest reputation; Tronchet, the defender of Louis XVI.; Portalis, a philosophic priest of conservative leanings; and Maleville and Preameneu; all chosen, not only for their learning and experience, but for their judgment and moderation. These were the *Rédacteurs* of the *Code Civil*, of which, however, it is always to be remembered that Cambacères was the parent. The revised version, as corrected by the *Rédacteurs*, and as criticised by the legal profession (among whom it had been circulated,) was submitted formally to the *Conseil d'Etat*, whose committee of legislation framed a new draft from the materials before them. The new draft, thus prepared and thus matured, was discussed article by article in the *Conseil d'Etat*; the First Consul, as M. Thiers informs us, descending from his war horse and not only attending every meeting, but astonishing "the whole world by the novelty and profundity of his suggestions."

In this way, after having received the sanction of the legislative body, a Code of Civil Law was, on the 3rd of March, 1803, presented to the French nation, and it has governed them ever since. The Code of Procedure, principally the work of Cambacères, appeared in 1806; the Code of Commerce in 1807; the *Code Pénal*, the *Code d'Instruction Criminelle*, and the *Code Forestier* at subsequent periods. These, the result of twenty years' thought and labour, form now the pocket volume known as the *Code Napoléon*. We have said enough to show that it did not originate with the extraordinary man whose name it bears, although it became his glory and his chief boast in after life that he had given it consummation.

The object of the preceding sketch is to show how cautiously the French went to work in framing their code, and how signal is the delusion of those (and they are many) who fancy that it was dictated by Napoleon. The radical alterations were not great. To be satisfied of this we have only to examine the old French treatises; but it seems enough to cite the notorious fact that more than three fourths of the *Code Civil* are extracted from or built upon Pothier.

To the power of seeing everything beforehand the faculty of legislating *ab ante*, the gift of prescience in fact, the jurists employed by Napoleon made no pretension; "thanks," says the Baron de Locré (their editor), "to that admirable good sense which pervades their whole performance."

To turn from France to England, we find that the illustrious Bacon had long meditated what he called "a particular digest or compilement of the laws of his own country." In his latter day of disgrace and depression he actually commenced this arduous undertaking; but he was obliged "to lay it aside" from inability "to muster his pen and forces," and from the want of hands to help him in a work which he truly termed one peculiarly "of assistance." Caution and moderation were the characteristics of his scheme, and order was the object of

it. He suggested no startling or abstract innovations. His biographer, Lord Campbell, commends the prudence and sagacity which forbade his attempting a code. What Bacon proposed was "to compile a method and digest of the King's laws;" and the argument he addressed to the regal pedant was, that "great good would come from bringing cases to a text law, and setting them down in method and by titles." He knew that this operation, as it advanced, would necessarily beget substantive improvements; but these, he wisely held, must be left to the legislature. We cannot otherwise understand him, when he says that those employed "should not be with a precedent power to conclude, but only to prepare, and propound to Parliament." And we are confirmed in this construction by the report of Lord Colchester, who as chairman of the Common's committee in 1796, describing the overture of Bacon to King James, stated that its end was "to prepare a digested result for Parliamentary consideration." The immediate effect, however, would have been to unfold the law as it stood, so that all should not only obey, but, by an exercise of reasonable intelligence, understand it.

The formidable task which proved too much for Bacon, was accomplished about a century afterwards (at the suggestion apparently of Burnet), by an obscure and unassisted hard-working barrister of Lincoln's Inn; for such, we believe, was Lord Chief Baron Comyn, when he compiled in Norman French the greater part, if not the whole, of his well known "Digest of the Laws of England;" embracing our entire jurisprudence, civil, criminal, ecclesiastical, and constitutional. This elaborate compilation, though prepared so early, did not see the light till 1762,* more than twenty years after the learned judge's death, and probably not less than forty after the date of the original composition, which, moreover, was published under the disadvantage of a translation by unknown editors, who seem to have been strangers to the author. Much of the law contained in this work had of course become stale. Its arrangement, too, was not always happy. The book as a whole was repulsive; but its matter was good; its law was safe. Its propositions were terse, and its references convenient and copious. In a word, it saved the drudgery of constantly hunting up old and scattered authorities. We therefore cannot wonder that the profession received the Chief Baron's performance as a boon, for it is certain that they still look back upon the donor with gratitude and reverence.

If success, so signal and so marvellous, attended the efforts of a single individual in delineating, unaided, the entire body of English jurisprudence, what ought we reasonably to expect from the labours of a Royal Commission engaged in a similar operation—remembering,

* Comyn flourished as a reporter in the reigns of King Wm., Queen Anne, and the first two Georges. His reports begin in 1695.