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THE S I S

CODIFICATION IN THE STATE OF

NEW YORK.

BY

FREDERICK OLDS BISSELL.

FOR THE DEGREE OF BACHELOR OF

LAWS.

CORNELL UNIVERSITY.

1893.
CONTENTS.

I. Introduction; aim and scope of this article. ........................................... 1.

II. The Code idea; early Codes down to and including the Code Napoleon and the Civil Code of Louisiana; Jeremy Bentham and his influence for Codification. ........................................... 5.

III. Codification in the State of New York to the year 1830; the Revised Statutes. ........................................... 17.

IV. Codification in the State of New York from the year 1830 to the present time; its influence among the other States of the Union and abroad. ........................................... 27.

V. Present status of the Codification movement in the State of New York; Statutory Revision. ........................................... 44.
I. INTRODUCTION; AIM AND SCOPE OF THIS ARTICLE.

It is not proposed to discuss in the following paper the relative merits and demerits of code and common law. There are two main reasons which may be offered as grounds for abstention from this discussion: The first, that it could hardly result in anything new. The codification question is without doubt the greatest question of modern jurisprudence; and its attractiveness to the thinker and writer is proportioned to its magnitude. It has been the theme of innumerable writings,—a vast literature, scattered through newspapers, magazines and pamphlets, and reposing in bulky volumes. The question has been looked at from every point of view, and every available argument pro and con seems to have been deduced. An attempt to sift and weigh arguments would only serve to involve one in the mazes of an interminable controversy, and necessitate the going over of wastes of chaff in finding a few grains of sound reasoning. Neither in this country nor in England has the discussion of the Codification question been calm and honest. On the one hand, its partisans have too often urged its cause over-zealously; too often have their attacks on the common law been bitterly uncompromising, and their claims for the code system absurdly and imprudently exaggerated. While on the other hand, the opposition to Codes has been very frequently marked by strong prejudices and a
preconceived hostility, feelings which arose instinctively among peoples attached to the common law system by every tie of tradition and immemorial custom, and by the still stronger tie of self-interest. The result is that very much of the literature of this controversy is rendered almost valueless to one who seeks to examine the question in a truth-seeking and impartial spirit.

There is, however, a second and still more cogent reason for not engaging in a consideration of the ethics of the codification problem. It is this: that such discussions have become practically valueless. Like all questions of wide reach and great popular concern, the codification controversy had no sooner arisen than it attracted the attention of the people, enlisted their interest, and soon challenged their action. The advantages of the code system are more apparent to the layman than are its defects; and by some species of reason apart from orderly and logical ratiocination, the sovereign people have come to believe more and more in the superiority and feasibility of codification. Against a conservatism at the bar, on the bench, and in high office that has seemed at times almost bigoted, the code idea has made its way only through a strong advocacy and support among the people. But of the codification controversy, with its endless discussion which shed no light and attained nothing, the pub-
lic soon grew weary; the strife has even had the effect, in New York State, at least, of rendering the terms code and codification distasteful. To the Legislature of this State these words have become as red rags to a bull; with law reform under this name they will have nothing more to do. Nevertheless, the work of codification advances steadily; yearly the domain of the unwritten law becomes smaller; with each revision of our Statutes they are widened in their application so as to embrace a broader field. A new generation fills bar and bench and legislature, born to the code system, for whom it has no terrors, and by whom its merits are being more fairly studied and justly appreciated. The peoples living under the English common law have had a half century's experience with the actual workings of codes, which will be of rich avail in the making of better codes. It seems as though the vexed question were solving itself, and that, by no revolution in our legal system, but by a gradual process, the common law will at length find complete expression in an all embracing Code.

This paper, therefore, will attempt only a sketch, historical in its nature, of the inception and progress of the code idea in the State of New York. A brief account will be given of early codes, existing prior to the beginning of the New York codification movement; of the practical effects pro-
duced in the other States of the Union and abroad by the adoption of Codes in this State, and an estimate of the present state of the movement toward codification and its outlook for the future.
II. THE CODE IDEA; EARLY CODES DOWN TO AND INCLUDING THE CODE NAPOLEON AND THE CIVIL CODE OF LOUISIANA; JEREMY BENTHAM AND HIS INFLUENCE FOR CODIFICATION.

The Anglo-Saxon temperament is eminently conservative; averse to change, jealous of novelty, and given to the worship of ancestry and of ancient institutions. This people possesses no institution more venerable than its body of Common Law. It is the slow accretion of the wisdom of centuries, the bulwark of English liberties, "the perfection of reason." In time there grew up among the lawyers of England an idolatrous admiration and reverence for the common law. They saw in it no defect; it was to them the repository of all legal truth, the epitome of all that was worth knowing of the science of the law. When the common law was transplanted to a new soil in the New World, the American lawyers followed their English brethren in this idolatry of the antique system. It was looked on as a precious inheritance from the Mother country, to be carefully guarded from the daring hand of the innovator. The lawyers of England and America alike regarded with horror the idea of codification when it first began to be vigorously agitated by Bentham and his followers about the beginning of the present century. The code idea was a novel thing to them, and dangerous as it was novel. In the eager
study of musty reports and black-letter commentators, they had little thought it worth their while to look beyond; the legal lore of the continental peoples was a sealed book to them; the learning of the civilians was unsound and a jargon. Almost a century of law-reform has served to liberalize the American lawyer, and to bring him out of bondage to the common law; yet, strange to say, the emancipation is not complete. There still exists in part, that unreasoning clinging to the old, that persistence in refusing to adopt what is new and strange. Judge Hoadley, in a paper read before a meeting of the American Bar Association in August, 1888, says: "An error which largely retards the advance of legal education and progress is, it seems to me, the general impression among lawyers and teachers of the law that we need to study no other system than that of the common law. Lawyers live too often intellectually in England, and not in the world. They are provincial, not cosmopolitan. Our legal ideas are founded on the notion that the customs of the people of the southern part of a little island in the North Atlantic Ocean have, in the past ages, crystallized into rules of action either actually or potentially adapted to most, if not all, emergencies. . . . . . . American lawyers, outside of Louisiana and Texas, spend their days poring over books of the common law. . . . To such a student the customs of civilized empires, the wise or-
ordinances which govern the relations of men in hemispheres, left to posterity by masters of the law, who studied the necessities of mankind, not in a barbarous island inhabited by mail-clad nobles and serfs, but at the very center of the then civilized world, are a sealed book. France and Germany and Italy and Spain and Scotland, South America and Mexico, even Louisiana and Texas, are not on his intellectual map; they are to him undiscovered continents, awaiting the revelation of some legal Columbus. The Institutes and Digests of Tribonian and his associates, the Partidas of the wise Alfonso have no place in his library. Gaius and Ulpian, and Pampinian and Montesquieu, Savigny and Von Ihering, are to him names without meaning. None of those apostles has written a gospel or an epistle of the law to him.¹

So it was that to the lawyers of England and America the codification idea seemed a startling novelty, despite the fact that the most perfect of Codes yet constructed existed in its completeness coeval with the earliest beginnings of the Common Law. Had the bar of England and America been learned, in some degree, in the history of the Code idea, the con-

troversy as to the codification of the common law would, at least, have been fairer and less acrimonious, and the common law lawyers would have lain themselves open much less frequently to an application of the reproach contained in Voltaire's definition of lawyers: "the conservators of ancient barbarous usages."

The idea of codification, therefore, though coming to the lawyers of England and America with much of the freshness of absolute novelty, was very far from being news; all the civilized nations of Europe, from the time of the revival of learning in the twelfth century, had been substantially governed by the principles of the Civil Law, that greatest of legal systems, embodied in the greatest of Codes,-- the Code of Justinian. Not only is this the greatest of Codes, but it is also in effect the first in point of time. It was preceded to be sure by several collections of laws called Codes, but these were little more than mere compilations, hardly Codes in the sense in which that word is now generally understood. Such, for instance, was the Theodosian Code, compiled by the Emperor Theodosius, which was a methodical collection in sixteen books of all the imperial constitutions then in force. This Code was the only body of Civil Law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being
during that interval confined to the East. Such, also, was the Codex Gregorianus, a collection of imperial constitutions made by the Roman jurist Gregorius, about the middle of the fifth century, and the Codex Hermogenianus, which was another collection of imperial constitutions, compiled during the fifth century by Hermogenes, a Roman lawyer, and intended as a supplement to the Codex Gregorianus.

The great Code of Justinian was completed in the year 529, A.D. It was the work of a commission headed by Tribonian, the most eloquent and learned lawyer of his day. The Emperor Justinian permitted Tribonian to choose his own associates, some of whom were professors of law in the celebrated schools of Constantinople and Beyritus, and others distinguished advocates who practiced in the Praetorian Courts. The completed work of this commission— the Corpus Juris Civilis— consisted of, first, the Code proper, a collection of imperial edicts in twelve volumes; second, the Digest, or Pandects, composed, as a piece of mosaic, of fragments taken from thirty-nine of the most illustrious jurisprudents, each fragment bearing the name of the author and of the work from which it is taken; third, the Institutes, being the elements of the Roman Law, in four books, composed for the benefit of students of the law and formally addressed to them in the introduction; and, fourth, the Novels, or new laws, as enacted
from time to time and added to the body of the Code.

It may be said generally that the Code of Justinian furnished the model for most of the later Codes of Continental Europe, both as to form, and in large part as to substance. Taken in chronological order the next great Code was the *Si"e"te Partidas* of Alfonso the Wise. Four of the ablest jurists of Spain began the work in the year 1258, during the reign of Ferdinand III, and finished it seven years later in the reign of the succeeding monarch, Alfonso. The names of the compilers of this Code have not, unfortunately, been transmitted to us; the character of the work, however, is a lasting monument to their genius and learning.

During the Middle Ages there was little code-making. All Europe was ruled by despots engaged rather in schemes and wars for power and self-aggrandizement than in framing systems of law for the government of their peoples. But with the end of the eighteenth century came the French Revolution, sweeping away old institutions and despotic laws, and demanding a new system adapted to the new order of affairs. The French Code is the idea of the Revolution of 1789. As early as the year 1790 a decree was adopted providing for a general code to be framed in simple and clear language, and provision to the same effect was inserted by the Constituant Assembly in the Constitutions of 1791 and 1793. In the latter year a
Code was drawn up by Cambacérès and presented to the Convention; but that body had conceived the gigantic idea of codifying all parts of the law; this first projet of Cambacérès failed to satisfy the Convention in point of scope and completeness, and was rejected by it. A commission of philosophers was then appointed to draft a Code, but they did nothing. In 1794, Cambacérès presented a second projet; during the discussion the Directory came into power, and codification was neglected for a time. Cambacérès then prepared still a third projet, which he submitted to the Council of Five Hundred. Before it had even reached a discussion before that body, the government again changed hands, and a coup d'état elevated Napoleon to power. During the few years following, several other drafts were prepared and presented; in 1789, Jacqueminot submitted a Code to the legislation committee of the Council of Five Hundred, which failed even of discussion; and a draft prepared by a committee of four, appointed by the Consuls, was elaborately discussed and presented to the Corps Legislatif toward the close of the year 1801, only to be finally withdrawn by the government. Finally, in 1802, the work of codification really commenced. A commission was organized, whose members were Tronchet, President of the Court of Cassation; Bigot-Préameneu, Solicitor-General; Portalis, Advocate-General of the Prize Court; and Maleville, a member
of the Court of Cassation. Tronchet was a profound lawyer, Portalis a distinguished jurist and philosopher, Bigot-Préameneu and Maleville were experienced advocates. The various titles of the Code, as prepared by this committee, were submitted to the higher courts for approval, discussed before the legislative Council of State, then before the Council itself in general assembly, presided over by Napoleon or by the second consul, Cambacérès. These various titles were then submitted to the legislative section of the Tribunal, and at length discussed and voted by the Corps Legislatif. The different portions of the Civil Code having been thus adopted and promulgated separately and at various times during a period of two years, were again voted and promulgated as a whole on the 21st day of March, 1804. When Napoleon became Emperor, the Code was revised in order that it might conform to the changes in the government, and was republished as the "Code Napoleon."

The Civil Code of France is preeminently the greatest of modern Codes. There are, however, a number of Codes of minor importance which may well be mentioned briefly here, in order that some fair idea may be gained, before entering upon our subject proper, of the material which New York codifiers, in their time, have had to draw upon, both as to concrete examples of Codes, and as to the practical experience
of their workings. Prussia adopted a Code in the year 1794. It was prepared by Dr. Carmer and Dr. Volmar with great care; and though operating in but a comparatively small territory, it had an immense result; for the first time in Europe all legal subjects were united in one view. A Code of law for the government of the Austrian Empire was compiled toward the end of the 18th century. The first part of it was published as early as 1786 under the Emperor Francis Joseph; it was submitted to the universities and the courts of justice, and at length put in force in the year 1810. Holland and Belgium also adopted Codes early in the present century which substantially embody the principles of the Civil Law, and in form are modeled after the Code Napoleon.

The emigrants from France and Spain, who formed the greater part of the early population of Louisiana, brought with them their civil law; it took firm root in the new soil, and when the State of Louisiana was admitted into the Union the civil law continued to be tacitly recognized as the law of the land, though all the other States were governed uniformly by the rules of the English Common Law. Following the tendency prevailing at the time among peoples governed by the civil law, the Legislature of Louisiana, in June, 1806, appointed two prominent lawyers, James Brown and Moreau Lislet, to compile and prepare a Civil Code. On the 31st of March,
1808, the Code prepared by this Commission was adopted by the Legislature. One of the sections provided that the ancient Spanish law was abrogated only where it was contrary to the Code or irreconcilable to it. In the year 1826, however, the Statute known as "the great repealing Act" was passed; this repealed all the old civil law in force before the promulgation of the Civil Code, leaving that body of law alone as of binding force in the administration of justice. In 1822-5 the Code was amended and some new provisions were added by a commission appointed by the Legislature, consisting of Messrs. Livingstone, Derbigny, and Moreau Lislet; and in 1870 it was again revised and enlarged by the incorporation into it of various amendments that had been passed from time to time.

In other respects the Code of Louisiana has not been materially altered; it subsists to the present day in practically the same form in which it was adopted in the year 1825.

It is a celebrated saying of Carlyle's that "in every phenomenon the beginning always remains the most notable moment." When Jeremy Bentham reached manhood and espoused the cause of Law Reform, to which he afterwards devoted his life, the people of England, persuaded by the praises of the lawyers and the panegyrics of Blackstone and his predecessors, were unanimous in their belief in the perfection of the common law, and in a settled aversion to any change in it. The
tion and the convincing eloquence of Burke strengthened them in their attachment to existing institutions, and in resistance to any alteration in the settled order of things. The time demanded in any would-be reformer of the common law, a clear and independent mind, a fearless courage, and a steadfast purpose. Bentham brought to his task all these qualifications and more; he strove dauntlessly for sixty years, and though it was permitted him to see but little of the results of his labors, they have since yielded a rich fruitage. Mr. Mill says of him: "He is one of the great seminal minds in England of his age;" ... "he is the teacher of teachers;" ... --"to him it was given to discern more particularly those truths with which existing doctrines were at variance." "Bentham has been in this age and country the great questioner of things established. It is by the influence of the modes of thought with which his writings inoculated a considerable number of thinking men that the yoke of authority has been broken, and innumerable opinions, formerly received on tradition as incontestable, are put on their defence and required to give an account of themselves. Who, before Bentham, dared to speak disrespectfully, in express terms, of the English Constitution or the English law? ... Bentham broke the spell. It was not Bentham by his own writings: It was Bentham through the minds and pens which these
writings fed,-- through the men in more direct contact with the world, into whom his spirit passed. If the superstition about ancestorial wisdom has fallen into decay; if the hardest innovation is no longer scouted because it is an innovation,-- establishments no longer considered sacred because they are establishments-- it will be found that those who have accustomed the public mind to these ideas have learned them in Bentham's school, and that the assault on ancient institutions has been and is carried on for the most part with his weapons.

There was no other subject upon which Bentham held such strong opinions as upon Codification; and there was no subject which he urged more persistently or with greater force and effect. In his writings is to be found the ultimate source of the codification movement in England and America,-- the first fruits of which were the New York Revised Statutes and the Code of Civil Procedure,-- the prototypes of the numerous Codes which in England and in the United States have systematized and made certain a part, at least, of the common law, and simplified an involved and technical procedure.

III. CODIFICATION IN THE STATE OF NEW YORK TO THE YEAR 1830; THE REVISED STATUTES.

The word Code is not a word of precise meaning. It is an Anglicising of the Latin Codex, which is defined as "a book or manuscript; a writing on paper, parchment, tablets, or other materials, folded like modern books, with a number of distinct leaves, one above another." The Emperor Theodosius called the collection of imperial constitutions made by him a Codex, thus for the first time applying the word in the general sense in which we now use it. It would thus seem that a code as originally defined was any compilation of laws made by public authority. This meaning, however, is now quite obsolete; the word has been narrowed in its signification so as to include only systematic bodies of laws, marked by certain general principles of arrangement, and inclusive of all the laws in the fields they purport to cover. The term Code was very little in use in England until the beginning of the present century; it had a sinister sound to the lawyers of that day; the idea it conveyed to them was a portentous one. A code at that time was generally defined to be a new system of

1Adam's Roman Antiquities, page 560.
positive written enactments, based on no existing laws, but evolved by theorists from fundamental principles of jurisprudence. When the Revised Statutes of New York were enacted this definition was general; the Revisers themselves so understood it, and were careful on every occasion to disclaim any intention on their part of composing a code. They publicly declared that the work they had in charge "must be carefully distinguished from codification. . . . We have found it necessary in our report to exclude this idea which has gotten abroad and exposed us to much prejudice with those who believe every project of that sort visionary and dangerous." 

This brief view of the varying interpretations of the word "Code" serves well to exhibit the scope of this paper, and to explain why an article on "Codification in the State of New York" should begin with an account of the Revised Statutes. The Revisers "builded better than they knew;" for this work is certainly a Code in the best and most widely accepted meaning of the term; and, moreover, it is one of the most remarkable of English Codes,-- the pioneer in a field of juridical legislation now largely occupied by the numerous Codes which have patterned after it.

The Revision and the Revisers--W. A. Butler--page 22.
Even during the Colonial period it had been found necessary to consolidate and revise the Statutes enacted by the Assembly of New York. There were two such revisions. The first was made in 1762 by William Smith and William Livingstone, the second by Peter Van Schaick in the year 1774. The Revolution wrought a vast change in the political conditions of the people of the State, and rendered necessary a further Revision of its laws. The first Constitution of New York, adopted April 20, 1777, declared that "such parts of the common law of England and of Great Britain and of the Acts of the Colonial Legislature as together formed the law of the colony at the breaking out of the Revolution in 1775, constituted the law of the State, subject to alteration by the Legislature." As to the common law, its interpretation and application to the novel state of affairs was left to the judges, as it is in great part to this day; but the work of revising the Statute law was at once undertaken by the Legislature. The first Revision of the Laws of the State was finished in 1789, and was the work of Samuel Jones and Richard Varick; while a second revision, the work of Chief Justice Kent and Justice Radcliff of the Supreme Court, was published in 1813. The last revision of the State Laws, prior to the Revised Statutes, was made in 1813 by a commission consisting of William P. Van Ness and John Woodworth. These revisions
were all similar in character, and none of them attempted a codification of the law which they embraced. They were mere compilations of statutes in the order of their enactment; the only changes made being such as became necessary in cutting out obsolete portions and reconciling inconsistent provisions.

In 1821 the people of New York State adopted an amended Constitution, which made important changes in the organic law, and in the mode of administering the government. It went into effect in January, 1823, and not long thereafter it became apparent that the changes thus made by the Constitution, as well as those effected by the enactments of successive Legislatures, necessitated a new Revision of the Statutes. Governor Yates, who had been a judge of the Supreme Court from 1808 to 1822, and had become familiar with the defects of the existing statutes, urged the matter upon the attention of the Legislature, and on November 27, 1824, an act was passed appointing James Kent, Erastus Root, then Lieutenant-Governor, and Benjamin F. Butler to revise the Statutes of the State. This act contemplated nothing beyond a compilation of the existing statutes in the manner pursued in the earlier revisions; it required the work to be completed in two years, and provided for a compensation of one thousand dollars for each Reviser in return for the services to be performed. Chancel-
the age of the judges, had just been forced to resign his judicial office, declined to serve as one of the Revisers; he was willing to undertake the work, but was unwilling to work with associates. It was probably a fortunate thing for all interested that Chancellor Kent did not become a member of the Commission of Revision. On the one hand the years following his enforced retirement from the bench bore rich fruitage in his "Commentaries on the American Law"; whilst, on the other, the Revisers, younger and more daring, were left at liberty to put into form those ideas which resulted so brilliantly in the Revised Statutes. John Duer, himself a young and ambitious man, was appointed by Governor Yates to fill the place vacated by Chancellor Kent.

It was but a short time after the Revisers began their work that the two younger members of the Commission, Mr. Duer and Mr. Butler, decided on attempting a bold and novel change in the scheme of revision and in the methods of its execution. Instead of compiling a mass of disconnected statutes, they proposed to recast it all; to simplify the language used, to supply deficiencies, and amend where the law was defective; the whole to be arranged symmetrically and made easy of reference by a scientific classification.
With these ends in view, the revisers applied to the Legislature for the necessary powers, accompanying their application with a specimen of the new style of statutes by which they sought to replace the old and cumbrous system of Revision. The third member of the Commission, General Root, was unable to agree with his junior associates in their views, and did not join with them in their application to the Legislature. This disagreement led to his retirement from the Commission. On April 2, 1825, the Legislature passed a bill naming Henry Wheaton as the successor to General Root, and granting to the Revisers the powers necessary to enable them to carry out their new scheme of Revision. Mr. Wheaton, however, was busily occupied from 1825 to 1827 with his duties as Reporter of the Supreme Court of the United States, and in April of the latter year he was sent as Chargé d'Affaires of the United States to Denmark. He prepared one or two of the earlier chapters of the Revision, but besides this probably did little more than to concur in the action of his associates. He resigned from the Commission in March, 1827, and Mr. John C. Spencer was appointed April 21, 1827, to fill the vacancy.

The Revisers set to work with enthusiasm, and were able to make quite an extended report to the Legislature when that body convened in January, 1828. This report gave a clear
analysis of the various subjects to be embraced in the Revised
Statutes, marking out the general division into Parts, and the
sub-divisions into Chapters and Titles. The only portion
presented in full was Chapter V—"Of Elections other than for
Town Officers." The utmost pains were taken in the prepara-
tion of the initial chapters, and their favorable reception
by the Legislature, the profession, and the public in general
augured well for the complete success of the undertaking. At
the reassembling of the Legislature in January, 1827, The Re-
visers reported Chapters I, II, III and IV; on January 30th,
1827, they presented Chapter V, "Of the Civil Officers of
the State"; followed in rapid succession by Chapters VI, VII,
VIII, IX, X, XI and XIX. The work of Revision was by this
time attracting a general interest; the Legislature was arous-
ed to effective co-operation, and in order to expedite the
work resolved on an extra session to be devoted solely to the
work of examining and acting on the Statutes as reported by
the Revisers. The Legislature convened accordingly on Septem-
ber 11, 1827. On the first day of the session the Revisers
submitted the whole of the First Part in twenty chapters, and
later all the chapters of the Second Part except Chapter I.
The most painstaking scrutiny was exercised in the examina-
tion of the various provisions, and after a session lasting
fifty-three days the entire First and Second Parts of the Revised Statutes were passed by the Legislature, excepting only Chapter I of Part Second, which was laid over until the next meeting of the Legislature.

During the recess of the Legislature the Revisers labored industriously at the unfinished portions of the Statutes, and especially at Chapter I of Part Second. This Chapter dealt with the question of estates in real property, tenures, and alienations. It was proposed to abolish all the old English system of tenures and alienations with their attending obscurities and fictions, and to substitute a simpler and more natural system. The Revisers expected a bitter fight in the Legislature over this Chapter, and in order to better explain and champion their measures, Mr. Spencer secured an election to the Legislature of 1828 as Senator from the Seventh District, while Mr. Butler became a member of the Assembly from Albany. However, they were agreeably disappointed; the Legislature was willing to go even beyond the propositions of the Revisers in the work of reform. In one instance this disposition on the part of the members of the Legislature is particularly well shown. The Revisers had not dared to abolish Fines and Recoveries; but had retained these ancient forms of action with various simplifications, also re-
porting several entirely new provisions which were so framed that they might be taken as substitutes for fines and recoveries. When these matters were taken up in the Assembly, that body passed a resolution directing the Revisers to report the titles so as to abolish fines and recoveries, and to simplify the action of ejectment and other proceedings to compel the determination of claims to real property; and, upon this being done, the Legislature adopted them, and by Section 24 of Title 7 of Chapter IV of Part III of the Revised Statutes it was declared that "all writs of right, writs of dower, writs of entry, and writs of assize, all fines and common recoveries, and all other real actions known to the common law, not enumerated and retained in this Chapter; and all writs and other process heretofore used in real actions, which are not especially retained in this Chapter, shall be and they are hereby abolished."

The extra session of 1828 convened September 9, 1828, and terminated December 10, 1828, a period of ninety-one days, during which the Legislature and the Revisers accomplished the design of completing their joint work before the end of the year. The entire body of the Revised Statutes was adopted December 10, 1828. Chapters V, VIII, IX, XIII, and XIV, Title II of Chapter XV, and Chapters XVI and XVIII of Part First had taken effect on January 1, 1828; and Chapter
XXVII of Part First had taken effect on May 1, 1828. The remaining Chapters were directed "to commence and take effect as laws on the first day of January, 1830."

The Revised Statutes of New York were framed under most favorable auspices. The reform agitation, begun in England about the beginning of the century, had paved the way for change; the need for reform was generally felt, and popular sentiment supported the Revisers in their work. In the choice of men to make the Revision the Legislature had been especially fortunate. They were peculiarly qualified for the work, both by natural endowment and by professional training and experience. And, finally, the Revision met with a favorable reception at the hands of judges and lawyers. The Courts in construing its provisions exhibited a freedom from prejudice and a determination to give the new law a fair construction and a strict application. Of the success of the Revised Statutes it is unnecessary to speak; suffice it to say that they have been largely copied both in form and in substance in most of the States of the Union, and to some extent abroad; and that, though many additions have been necessarily grafted upon them in the course of three score years of amazing development and prosperity, and they have passed through eight editions, the added matter has in no wise changed the original plan, or weakened in any essential the main structure.
IV. CODIFICATION IN THE STATE OF NEW YORK FROM THE YEAR 1830 TO THE PRESENT TIME; THE INFLUENCE AMONG THE OTHER STATES OF THE UNION, AND ABROAD.

De Witt Clinton, the greatest of the earlier Governors of New York, in his message to the Legislature at the opening of the year 1825, declared that "the whole system of our jurisprudence requires revised arrangement and correction. A complete code, founded on the salutary principles of society, adapted to the interests of commerce and the useful arts, the state of society and the nature of our government, and embracing those improvements which are enjoyed by enlightened experience, would be a public blessing. It would free our laws from uncertainty, elevate a liberal and honorable profession, and utterly destroy judicial legislation, which is fundamentally at war with the principles of representative government on this subject. There were many in New York State whose views coincided with those of Governor Clinton; and the unqualified success of the Revised Statutes served to strengthen the popular faith in the Code idea, and converted many more to a belief in the feasibility of codifying the whole body of the Laws of the State.

'Quoted in The Revision and the Revisers-- W.A. Butler-p.21
The popular sentiment of the time in favor of codification found authoritative expression in the Constitution of the State of New York as revised and adopted in the year 1846. The seventeenth section of the first Article reads as follows: "The Legislature at its first session after the adoption of the Constitution shall appoint three commissioners, whose duty it shall be to reduce into a written and systematic Code the whole body of the Law of this State, or so much and such parts thereof as to the said Commissioners shall seem practicable and expedient; and the said Commissioners shall specify such alterations and amendments as they shall deem proper, and they shall at all times make reports of their proceedings to the Legislature when called upon to do so; and the Legislature shall pass laws regulating the tenures of office and the filling of vacancies therein, and the compensation of said Commissioners, and shall also provide for the publication of said Code prior to its being presented to the Legislature for adoption." The twenty-fourth section of the sixth Article of the Constitution is as follows: "The Legislature at its first session after the adoption of the Constitution shall provide for the appointment of three Commissioners, whose duty it shall be to revise, reform, simplify, and abridge the rules and practice, pleadings, forms, and proceedings of the courts
of record of this State, and to report thereon to the Legislature, subject to their adoption and modification from time to time." The Code partisans have urged as one of their strong arguments that the above provisions of the Constitution were mandatory in their nature, and imposed an absolute duty on the Legislature of proceeding to a codification of all the Laws of the State. A careful reading of the sections in question, however, fails to reveal any such intention on the part of the framers of the Constitution. The Legislature has regarded the provisions quoted above as directory merely, and the weight of opinion has inclined toward this latter view.

On the 8th of April, 1847, the Legislature passed an act (Laws of 1847, ch. 59) appointing the Commissioners provided for by the Constitution. Reuben H. Walworth, Alvah Worden, and John A. Collier were named as "Commissioners of the Code," to hold office for two years; and Arphaxed Loomis, Nicholas Hill, Jr., and David Graham were appointed "Commissioners on Practice and Pleading," to hold office until the 1st day of February, 1849. In the Code Commission, Chancellor Walworth having declined to serve, Anthony L. Robertson was, on the 13th day of May, 1847, named in his stead. (Laws of 1847, ch. 289.) In January, 1848, Mr. Collier resigned, and on the 18th of January, 1848, Seth C. Hawley was appointed in his place by joint resolution of the Legislature. On the 10th
of April, 1849, two days after the expiration of the Commissioners term of office, as fixed by the Act of 1847, a new act was passed, naming Mr. Warden and Mr. Hawley, with John C. Spencer, Commissioners of the Code till the 6th of April, 1851. (Laws of 1849, ch. 312.) Mr. Spencer declined to serve on the Commission, and the Commission itself was abolished by an act passed on the 10th day of April, 1850. (Laws of 1850, ch. 281.) In the three years of its existence this first Code Commission accomplished nothing; the Commission reported nothing to the Legislature, and left no concrete result of their labors.

In the Commission on Practice and Pleading, Mr. Hill having resigned, David Dudley Field was appointed in his stead on the 29th of September, 1847. This Commission, now consisting of Messrs. Loomis, Graham, and Field, on the 29th of February, 1848, reported to the Legislature the draft of a Code of Civil Procedure, embracing the substance of the reforms proposed in the practice of the courts in civil cases, which was enacted into a law with a few amendments on the 12th day of April, 1848. On the 31st day of January of the following year, the Commission was continued until the first day of April, 1849 (Laws of 1849, ch. 16); and by the act passed on April 10th, 1849, previously referred to, (Laws of 1849, ch. 312) Arphaxed Loomis, David Graham, and David Dudley Field
were "appointed Commissioners further to revise, reform, simplify, and abridge the rules and practice, pleadings, forms, and proceedings of the courts of record of this State." On the 28th day of January, 1849, the Commission had reported to the Legislature a revision of the Code previously submitted by them, and which had become law on the 12th day of April, 1848. This revised draft contained important additions and amendments; it was considered at length by the Legislature, and finally passed on the 11th day of April, 1849 (Laws of 1849, ch. 438.) The Commission made two more reports to the Legislature; the one contained still further provisions amending and adding to the Code of Procedure, and was handed in on the 30th of January, 1849; the other was submitted on the same day, and contained the draft of a Code of Criminal Procedure.

The completed Code of Civil Procedure, as finally submitted by the Commission on January 30, 1849, was never acted upon by the Legislature; while the Code of Criminal Procedure, after a delay of over thirty years was finally passed and became law on June 1st, 1881. (Laws of 1881, ch. 442.)

Thus it will be seen that the net result in the shape of enacted laws of twelve years of active code-making was comprised in the Code of Civil Procedure, as adopted April 11, 1849. This Code, however, though effecting but a part of the reforms which were evidently contemplated by the
Constitution-makers of 1846, was a result in no wise inconsiderable or disproportionate to the labor and expense involved in its preparation and enactment. It was most radical in the changes it made; it abolished the distinction existing between law and equity, and swept away at once all the common law forms of action and procedure, with their accumulations of subtleties and technicalities and substituted a system comparatively simple, rational, and expeditious. It opened a broad way for future reforms in the law; and the results attending its successful operation are to be seen in the Codes which followed it, not only in New York, but in most of the other States of the Union, and in Great Britain.

The success of the experiments in codification thus far made by the Legislature seem to have encouraged that body to still further attempts in this direction; and on the 6th day of April, 1857, an act was passed (Laws of 1857, ch. 266), appointing David Dudley Field, William Curtiss Noyes, and Alexander W. Bradford, Commissioners "whose duty it shall be to reduce into a written and systematic code the whole body of the law of this State, or so much and such parts thereof as shall seem to them practicable and expedient, excepting always such portions of the law as have been already reported upon by the commissioners of practice and pleadings, or are embraced within the scope of their reports." Section 2 of the act
reads as follows: "The Commissioners shall divide their work into three portions; one containing the political code, another the civil code, and a third the penal code. The political code must embrace the laws governing the State, its civil polity, the functions of its public officers, and the political rights and duties of the citizens; the civil code must embrace the laws of personal rights and relations of property and of obligations; the penal code must define all the crimes for which persons can be punished, and the punishment for the same. But no portion of either of said codes shall embrace the courts of justice, the functions or duties of judicial officers, nor any provisions concerning actions or special proceedings, civil or criminal, or the law of evidence." The Commissioners were to hold their offices for five years and were to receive no compensation whatever. It was the evident intention of the Legislature to have prepared for their consideration a complete cycle of Codes, covering all the law of the State. Previous Commissions had formulated a Code of Civil Procedure, including the law of evidence, and a Code of Criminal Procedure; and the work of the Commission of 1857 was planned with a view to covering the ground not occupied by these two Codes. By an act passed the 23rd day of April, 1862 (Laws of 1862, ch. 460), the terms of office of the Commissioners were extended to April 1, 1865; at the expira-
tion of which time the Commission, having finished its labors, was dissolved.

In accordance with the provisions of the Act of 1857 the Commissioners prepared a Political Code, a Civil Code, a Penal Code, and also, at the request of the Legislature, a Book of Forms adapted to the Code of Civil Procedure. The Political Code was completed in 1860, and the Civil and Penal Codes in 1865. The whole was submitted to the Legislature in numerous reports; the ninth and final report being made on February 15th, 1865. It was signed only by Messrs. Field and Bradford, Mr. Noyes having died on the 25th day of December, 1864.

The fifth section of the Act of 1857, creating the Commission, provided that "whenever the Commissioners shall have prepared the Codes or any portion of them, they shall enter into a contract with the printers of the State department for the printing of the same, and cause the same to be distributed among the judges and other competent persons for examination; after which the Commissioners shall re-examine their work, and consider such suggestions as shall have been made to them. They shall then cause the codes as finally agreed upon by them to be reprinted under the contract as aforesaid, and distributed to all the judges of the court of appeals, supreme court, superior court and common pleas of
the City of New York, and to all the county judges, surrogates and county clerks, six months before being presented to the Legislature; and the penal code to be distributed in like manner to the district attorneys of the several counties of the state." In carrying into effect the provisions of this sections, the newly prepared Codes were necessarily distributed among a large number of persons whose attention was thus brought to bear upon them, and whose interest would in most cases be more or less affected by their enactment. The Civil Code particularly was the subject of a great war of words; the bar was divided in its opinion; the judges as a rule inclined against the Code; while a majority of the laymen who thought at all upon the subject favored its adoption. For twenty years the discussion continued; innumerable pamphlets and newspaper articles were written, and the whole question became involved in an inky cloud of involved argumentation. The partisans of either side descended even to personalities; solution of the problem on its merits became impossible; it was only to be settled by action of the Legislature. Three times did the Civil Code pass the Assembly and the Senate, only to be vetoed on each occasion by the Governor. Since the year 1855 interest in the matter of the passage of the Civil Code has very much declined; its author and strongest champion, Mr. David Dudley Field, has become advanced in years
and influence, and its other supporters have become lukewarm. There is no prospect that the Civil Code will be adopted in the State of New York, unless some event now unforeseen should revive popular interest in the measure. The Political Code has been utterly neglected; and the Penal Code failed of decisive action by the Legislature for fifteen years; but was finally adopted July 26, 1881 (Laws of 1881, ch. 676), three months after the passage of the Code of Criminal Procedure.

Since the year 1865 there has been very little codemaking in the State of New York. The work of subsequent Commissions has been confined to revising and consolidating statutes already in force. On March 2, 1870, the Legislature passed an act (Laws of 1870, ch. 33) authorizing the Governor, by and with the consent of the Senate, to appoint three persons learned in the law, as Commissioners to revise, simplify, arrange, and consolidate all Statutes of the State of New York, general and permanent in their nature, which shall be in force at the time such Commissioners shall make their final report." The duties assigned the Commission were further defined thus: "Section 2. In performing this duty, the Commission shall bring together all statutes and parts of statutes which from similarity of subject ought to be brought together, omitting redundant or obsolete enactments, and making
such alterations as shall be necessary to reconcile the con-
tradictions, supply omissions, and amend the imperfections of
the original text, and they shall arrange the same under ti-
tles, chapters, and sections, or other suitable sub-divisions,
with head-notes briefly expressive of the matter contained in
each division;"

"Section 5. The statutes so revised and consolidated
shall be reported to the Legislature as soon as practicable,
and the whole work completed in three years."

The Commission as originally appointed by Governor
Hoffman consisted of Francis Kernan, Amasa J. Parker, and
Montgomery H. Throop. The last named appointee, however, was
the only one who remained a member of the Commission until
its dissolution. Nelson J. Waterbury, Charles Stebbins, Jr.,
Jacob I. Werner, Sullivan Caverno, Alexander S. Johnson, and
James Emott were all appointed Commissioners at various times,
and held office for varying periods. By Chapter 54 of the
Laws of 1872, passed May 6, 1872, the time permitted the Com-
missioners for completing their work was extended to the
year 1875; and on April 18, 1874, the Legislature passed an
act (Laws of 1874, ch. 212) granting it two years longer time
in which to finish its work of revision. An act passed May
9, 1873 (Laws of 1873, ch. 467) authorized the Commissioners
"to incorporate in and make part of such revision: the Political Code, the Penal Code, The Code of Civil Procedure, and the Code of Criminal Procedure, . . . . or so much and such parts of such codes as the said Commissioners for the revision of the statutes may deem advisable, with the same force and effect as though the said codes were now a part of the statutes of this State." And another act, passed June 7, 1875, (Laws of 1875, ch. 520) authorized the Commission in like manner to incorporate in and make part of their revision the Civil Code, reported in 1865, or so much thereof as they might deem advisable. The labors of the Commission were retarded by differences of opinion among its members, as has been noted, its personnel varied greatly, and though it existed for seven years the sole result of its labors was the Code of Civil Procedure. This Code very greatly enlarged upon the former Code of Civil Procedure, and made numerous important amendments to the plan and detail of that statute. The first thirteen chapters were enacted in 1876-7 (Laws of 1876, chs. 448 and 449, as amended by chs. 416 and 422 of the Laws of 1877); the remaining chapters from the fourteenth to the twenty-second inclusive, after twice passing the Legislature, and twice failing to receive the Governor's approval, were finally adopted on May 6, 1880 (laws of 1880, chs. 170 and 301) and went into effect on the 1st of September of that
As has been previously said, the Legislature, in the year 1881, passed the Penal Code and the Code of Criminal Procedure. These two Codes, with the Code of Civil Procedure, represent the net results of nearly fifty years of active code-making. It can hardly be said that there was ever any very great need for the adoption of the Political Code; its place is very well filled by the Revised Statutes and legislation supplementary thereto. Over the Civil Code a great conflict has raged, and after thirty years it is still unadopted in the State of New York. In some other States of the Union, however, it has fared better. Dakota adopted it in 1866, California in 1873; and though bench and bar disagree among themselves as to the success of its operation, it has not, at least, been repealed, either in California or the Dakotas.

The Penal Code, too, is in force in both California and North and South Dakota, and is regarded as an unqualified success by the bench and bar of the three states.

The Code of Criminal Procedure had been adopted in eighteen of the other States and Territories of the Union before it was finally enacted by the Legislature of New York. These States and Territories, with the dates of their adop-
tion of the Code of Criminal Procedure, are as follows:

The beneficence of the sweeping reforms accomplished by the Code of Civil Procedure of New York, first enacted in 1848, soon became apparent, and the other States made haste to follow the example of New York by adopting similar statutes. These Codes as a rule closely resemble the New York Code, and in most cases are merely the New York Code enacted verbatim, with the alterations and amendments necessary to fit local conditions and circumstances. The first Code of the series patterned after the Code of Civil Procedure of New York was drafted in Missouri by Judge Wells, and adopted very shortly after the enactment of the New York Code. Then followed Codes of Civil Procedure in California in 1851, Kentucky in 1851, Ohio in 1853, Iowa in 1855, Wisconsin in 1856, Kansas in 1859, Nevada in 1861, Dakota in 1862, Oregon in 1862, Idaho in 1864, Montana in 1864, Minnesota in 1866, Nebraska in 1866, Arizona in 1866, Arkansas in 1868, North Carolina in 1868, Wyoming in 1869, Washington Territory in 1869, South Carolina
in 1870, Utah in 1870, Connecticut in 1874, Indiana in 1881, and Colorado in 1887.

The New York Code of Civil Procedure soon attracted attention in England. A reform of the common law system of pleadings and practice had long been agitated there, but nothing had been accomplished at the time of the enactment of the New York Code. An elaborate review of it was published in the leading article of the Law Magazine for February, 1851, in which occurs the following passage: "Most opportunely, therefore, while all people are agreed that reform is needed (the only question being how far it can with safety and advantage be carried) and while the new Common Law Commission are issuing suggestions, halting and faltering, willing, perhaps, but unable to free their minds from that peculiar tone which long and successful practice under our present system inevitably induces; while, too, some have been found to advocate our going over to Rome (in the present day rather a taking idea), there to find by means of a "Praetor" relief for our manifold legal miseries, and a cloud of pamphlets have appeared, each advocating some changes and exposing some abuses, a practical people in the western hemisphere have appointed a commission, and quietly, expeditiously, and cheaply (wishing probably to shame our criminal law commissioners, who have passed fifteen
years, spent thousands, and published reports without end and without result) and out of laws similar to our own and derived from us have created a simple, single, and intelligible judicial system, which has hitherto worked well in the State (New York) by which it was first sanctioned, and has in consequence been adopted by several other States of the American Union."

The New York Code naturally had a great effect upon subsequent legislation on this subject in England, and this effect can be distinctly perceived in the features and methods adapted in the series of reformatory measures culminating in the great English Judicature Act of 1873. The parentage of this Act is readily traceable to the Code of New York; so that by the general adoption of the Judicature Act among the colonies of England, the practical effects of the enactment of the Code of Civil Procedure of this State are seen to have made themselves felt all over the world. The list of the English colonies which have adopted the Judicature Act includes New South Wales, Queensland, South Australia, Western Australia, Tasmania, New Zealand, Jamaica, St. Vincent, the Leeward Islands, British Honduras, Gambia, Grenada, Nova Scotia, Newfoundland, Ontario, and British Columbia. Moreover, in form and substance the Indian Codes, prepared by a commission headed by Lord Romilly and adopted about 1861, more or
less closely resembles the Code of Civil Procedure of this State; and in Hong Kong the New York Code has been reproduced very much in the language of the original, as is also the case at Straits Settlements. In the words of the chief author of the New York Code, and of the modern codification movement, Mr. David Dudley Field: "In civil procedure the legislation of New York has turned and guided the current in twenty-three States and two Territories of the American Union; it has done the same in England, Ireland, and India, and in sixteen English colonies; in criminal procedure it has been followed by eighteen States and Territories of the American Union, and its Penal Code has become the law of four and its Civil Code of three American States."

V. PRESENT STATUS OF THE CODIFICATION MOVEMENT IN THE STATE OF NEW YORK; STATUTORY REVISION.

There has been no effective code-making in the State of New York since about the year 1865, when the Commission headed by David Dudley Field reported the last of the series of Codes designed to embrace the whole law of the State. The Commission of 1870-77, which accomplished only a revision and enlarging of the Code of Civil Procedure, seems, from the acts creating and directing it, to have been organized by the Legislature for the purpose of securing a reformulation and re-codification of all the State law. However this may have been, this project now seems destined to long delay, if, indeed, its accomplishment shall ever again be attempted. The feeling that codification has been carried as far as it is expedient and practicable, coupled with a marked disinclination on the part of the Legislature, the bench, and the profession generally to reopen a bitterly-fought and fruitless controversy, is operating effectually to bar further movement toward the adoption of a Civil and a Political Code. And as was suggested in the introductory chapter, it seems probable that if the vast mass of laws relating to civil and political rights and duties ever is marshalled into codes, it will be
accomplished gradually, by an accumulation and arranging of successive statutes, and not by the spontaneous enactment of complete bodies of laws.

The Revision of 1830 is the last general revision that the public laws of the State of New York have undergone. During the sixty odd years that have intervened, the State has made wonderful advances in population and wealth, in agriculture, commerce, and manufactures. With this progress much old law has become obsolete, or has been of necessity subjected to change; while successive legislatures have been putting forth a steady stream of new statutes, made more or less necessary by changed and novel conditions of affairs requiring regulation and government. About the old Revised Statutes of the State has gathered a vast and heterogeneous mass of legislation, confused, often contradictory, and infinitely in need of sifting and consolidating. The sterling excellence of the Revised Statutes long delayed the work of statutory revision; the people of the State preferred to hold to them, though antiquated and inadequate, than to trust to the results of a new revision. However the growing necessity for a weeding out and re-arranging of the public laws of the State led at last to the passage on May 5, 1889, of "An Act to provide for the revision and consolidation of certain of the general statutes
of this State." (Laws of 1889, ch. 239.) The Act provides for the appointment of commissioners, and defines their duties as follows:

"Section 1. The Governor is hereby authorized to appoint, by and with the advice and consent of the Senate, three competent persons as Commissioners to prepare and report to the Legislature bills for the consolidation and revision of the general Statutes of this State upon the following subjects:

I. Conferring powers of local legislation upon boards of supervisors and the local authorities of towns and villages, and prescribing the rights and powers thereof.

2. Providing for the organization, government, and control of corporations, except banks, banking and trust companies and municipal corporations.

3. Providing for the collection and assessment of taxes, and the exemption of property from taxation throughout the State.

4. Relating to the poor.

Section 2. Said commissioners may also prepare bills for the consolidation and revision in like manner of such other general statutes of the State as such Commissioners may consider most in need of consolidation and
The original appointees to this Commission were Isaac H. Maynard, Charles A. Collin, and Eli C. Belknap. Judge Maynard afterwards retired, on his elevation to the Court of Appeals bench, and his place in the Commission was filled by the appointment of Daniel Magone; while Mr. Belknap has since been succeeded in office by John J. Linson. In their first report to the Legislature, the Commissioners, after commenting on the difficulty and importance of the task assigned them, proceed as follows: "In view of the fact that the original system of the Revised Statutes is already broken up, and of the confused arrangement of subsequent legislation, the Commission felt compelled to formulate a general plan upon which to proceed, and accordingly at the outset adopted two leading principles:

First, to embody in a single chapter or series of chapters all the laws relating to a single subject, so that the entire law relating thereto may be easily ascertained, and that each chapter or series of chapters may stand upon its own merits and be separately considered.

Second, to fit each bill into a clearly defined system, so that a continuance of a similar work upon other general statutes will not involve a reconstruction of the work now
submitted, but that all shall be parts of one consistent whole."

In consonance with the principles thus adopted the Commissioners prepared and reported, and the Legislatures of 1891-2 enacted, the following consolidated Statutes, viz:
The Statutory Construction Law; the State Law; the Indian Law; the Election Law; the Public Officers Law; the Legislative Law; the Executive Law; the Salt Springs Law; the General Municipal Law; the County Law; the Highway Law; the Town Law; the General Corporation Law; the Stock Corporation Law; the Banking Law; the Insurance Law; the Railroad Law; the Transportation Corporations Law; and the Business Corporations Law;

The labors of the Commission for the past year have resulted in the preparation and the very recent passage by the Legislature of the following Statutes: The Public Buildings Law; the Military Code; the Public Health Law; the Excise Law; two articles of the Tax Law and one of the Education Law. It is perhaps too early to attempt to pass on the merits of the new revision; it has, however, been very favorable received by the judges and lawyers of the State; and it may be confidently expected that a completion of the scheme outlined by the Commissioners will result in such a revision of the
Public statutes of New York as has long been needed; a revision comprehensive in its scope, terse and clear in its form of expression, and made ready of reference by an orderly and scientific arrangement.
LIST OF AUTHORITIES.

Bryce. James,

Butler. William Allen,
"The Revision and the Revisers."--New York, 1883.

Hammond. Jabez D.,

Mill. John Stuart,
"Dissertations."--5 vols.--New York, 1832. (On Bentham.)

The Civil List of New York State for 1890-91.--Albany, 1892.


The Penal Code of New York.


The Revised Statutes of New York.--5 vols.

The Session Laws of New York.

The Reports of the Commissioners of Statutory Revision.
Albany, 1890-91-92.

The Reports of the Proceedings of the American Bar Association.

Special Articles.

Carter. James C.,

"The Province of the Written and Unwritten Law;"

Countryman. Edwin,
Dillon. John F.,

Field. David Dudley,

Hoadly. George,

Merrick. E. F.,

Merrill, George,

Miller. Samuel F.,
Address; Report for 1879 (vol. 2) of the Proceedings of the New York State Bar Association.--page 46.

Semmes. Thomas J.,
Address; Report for 1886 of the Proceedings of the American Bar Association.--page 189.
"The Civil Law as Transplanted in Louisiana;" Report for 1882 of the Proceedings of the American Bar Association, page 243.- Pamphlets.--

Carter. James C.,
"The Proposed Codification of our Common Law;" New York, 1884.

Field. David Dudley,
"The Civil Code; What it Is; and Why it Should be Adopted." New York, 1882.
Field. David Dudley,
"A Short Response to a Long Discourse."--An answer to
Mr. James C. Carter's pamphlets on the "Proposed Cod-
ification of our Common Law."--New York, 1884.

Fowler. Robert Ludlow,
"Codification in the State of New York;"--New York, 1884.

Matthews. Albert,
"Thoughts on Codification of the Common Law."--New
York, 1881.

Viele. Sheldon T.,
"Is the Common Law a Proper Subject for Codification?"
Albany, 1880.