

PREFACE.

IN presenting to the profession the first volume of the Reports, which the editor is pledged to continue, he feels how much he will stand in need of its indulgence, for the imperfections which may be discovered in a work, at once so important and difficult. It is not, however, with the view of depreciating the justice of criticism, that he offers a few remarks upon the nature of the undertaking, and the manner in which it has been executed.

Of the arguments of counsel, nothing more has been attempted than to give a faithful outline; to do justice to the learning and eloquence of the bar, would not be possible, within any reasonable limits: the reporter, therefore, trusts that his professional brethren will regard with candor the imperfections they may perceive, whilst the public will attribute them to the cause mentioned. It is possible, that some important illustrations may have been omitted; but it is believed, that the points and authorities have been faithfully recorded, where the cases either admitted of, or required, it.

The same discretion has been exercised in omitting to report cases turning on mere questions of fact, and from which no important principle, or general rule, could be extracted. Of these, an unusual number has recently occurred on the admiralty side of the court, attended with an infinite variety of circumstances, but inapplicable, as precedents, to future cases.

Some notes have been added, in order to illustrate the decisions by analogous authorities; and whilst gleaning in the rich field of prize jurisprudence, afforded by the late war, it was thought expedient to subjoin a more ample view of the practice in prize causes than has yet been presented to the public, which may possibly serve as a check to those irregularities that had crept in, from the want of experience in this branch of the administration of justice. Its doctrines have been developed by the court in a masterly manner; and we may contemplate with pride and satisfaction, the structure which has been built up in so short a time, and under circumstances so unpropitious to the development of the true principles of public law. On this occasion, we are compelled to lament the loss of an illustrious civilian, whose labors so eminently contributed to facilitate those of the court, and who has been removed, by the inexorable hand of death, from

this scene of active contention and generous emulation.¹ With how much dignity and usefulness he adorned the bar, and with what powers of analysis he unfolded the most intricate questions of jurisprudence, the records of this tribunal will attest. Less attentive to the graces of elocution, and the technical forms of law, than to the principles of equity, his mind was enlarged by a philosophical view of universal jurisprudence, and to him may be applied what Cicero says of his contemporary Sulpicius, “*Videtur in secunda arte primus esse maluisse, quam in prima secundus, id quod est adeptus, in jure cicti esse princeps. Neque ille magis juris consultus, quam justitiae fuit: ita ea quae proficisebantur a legibus et a jure civili semper ad facilitatem equitatemque referebat.*” But it is higher praise, and equally well merited, that in him the character of the advocate seemed to borrow a new lustre from that of the philosopher and the patriot; that, like the illustrious Roman referred to, “in his political conduct, he was always the friend of peace and liberty; moderating the violence of opposite parties, and discouraging every step towards civil dissensions.”

Should the annotations contained in this volume be favorably received by the public, the editor will hereafter continue this branch of his labor with a less timid hand, and, in the words of Lord BACON, make it his aim, “to collect the rules and grounds dispersed throughout the body of the same laws, in order to see more profoundly into the reason of such judgments and ruled cases, and thereby to make more use of them for the decision of other cases more doubtful; so that the uncertainty of law, which is the principal and most just challenge that is made to the laws of our nation, at this time, will, by this new strength laid to the foundation, be somewhat the more settled and corrected.” Such a commentary seems indeed, indispensable to the utility of reports of the proceedings in courts of justice. For, as Sir WILLIAM JONES has observed, “if *law* be a science, and really deserves so sublime a name, it must be founded on principle, and claim an exalted rank in the empire of reason.”

¹ Mr. Dexter, who died during the vacation.