

PREFACE

TO THE FIRST EDITION.

MUCH of that uncertainty of the law, which is so frequently, and perhaps so justly, the subject of complaint in this country, may be attributed to the want of American reports.

Many of the causes, which are the subject of litigation in our courts, arise upon circumstances peculiar to our situation and laws, and little information can be derived from English authorities, to lead to a correct decision.

Uniformity, in such cases, cannot be expected, where the judicial authority is shared among such a vast number of independent tribunals, unless the decisions of the various courts are made known to each other. Even in the same court, analogy of judgment cannot be maintained, if its adjudications are suffered to be forgotten. It is, therefore, much to be regretted, that so few of the gentlemen of the bar have been willing to undertake the task of reporting.

In a government which is emphatically styled a government of laws, the least possible range ought to be left for the discretion of the judge. Whatever tends to render the laws certain, equally tends to limit that discretion ; and perhaps, nothing conduces more to that object than the publication of reports. Every case decided is a check upon the judge : he cannot decide a similar case differently, without strong reasons, which, for his own justification, he will wish to make public. The avenues to corruption are thus obstructed, and the sources of litigation closed.

One of the effects expected from the establishment of a national judiciary, was the uniformity of judicial decision ; an attempt, therefore, to report the cases decided by the Supreme Court of the United States, cannot need an apology ; and perhaps, none can be given for the inadequate manner in which that attempt has been executed. It has been the endeavor of the reporter to give a faithful summary of the arguments of counsel. To do them complete justice, he acknowledges himself incompetent. In no instance, perhaps, has he given the words in which the ideas were conveyed,

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as his attention was almost entirely occupied in collecting the point of the argument. He may have omitted ideas deemed important, and added others supposed to be impertinent ; but in no case has he intentionally diminished the weight of the argument. It may possibly be alleged, that he has introduced into the reports of some of the cases more of the record than was necessary. If he has erred in this, he has been led into the error, by observing that many of the cases in the books are rendered useless, by the want of a sufficient statement of the case, as it appeared upon the record ; and he imagined it would be a less fault to insert too much, than to omit anything material.

He has been relieved from much anxiety, as well as responsibility, by the practice which the court has adopted of reducing their opinion to writing, in all cases of difficulty or importance ; and he tenders his tribute of acknowledgment for the readiness with which he was permitted to take copies of those opinions.

He is indebted to Mr. Caldwell, for his notes of the cases which were decided prior to February term 1803, without the assistance of which, he would have been unable to report them, as his own notes of those cases, not having been taken with that view, were very imperfect.

He also feels his obligation to those gentlemen of the bar, whose politeness has prompted a ready communication of their notes, which have enabled him more correctly to report their arguments.

Should an apology be deemed necessary for the liberty he has taken in his notes to some of the cases reported, that apology exists in a wish candidly to investigate the truth. In doing this in a respectful manner, he does not feel conscious of giving cause of offence to liberal and candid minds.

If the fate of the present volume should not prove him totally inadequate to the task he has undertaken, it is his intention to report the cases of succeeding terms.