PREFACE.

Some four hundred years ago, one of the greatest advocates of the cas. system of studying law—indeed, the only one, so far as I am aware, who ever wrote a series of law reports for students' use—said: "The reporting of particular cases or examples is the most perspicuous course of teaching the right rule and reason of the law; for so did Almighty God himself, when he delivered by Moses his judicial laws." 5 Reports. Preface, p. ix. And apparently those who agree with this eminent professor of law have been increasing in numbers for some time. I do not wish to challenge the statement, but to call attention to the maturer experience and after conduct of the great judge who made it.

There are various methods of reporting decided cases, and there are various methods of studying law by the case system. The most elaborate method of case reporting is first to give the entire record in the case, then a briefer statement of the facts, then the arguments on both sides at large and all the authorities cited on either side stated at length as to each point in the case separately, together with any other arguments and authorities that the industry of the reporter can discover, and finally the conclusion of the court as to each, with the reasons assigned therefor. By this method of reporting Lord Coke made many of his cases such storehouses of learning that they have been the delight and admiration of every seeker for the law on these questions ever since; for nowhere could such elaborate statements of the matter be found, nor even anything to add to what he had said. For example, there are Shelley's Case and Chudleigh's Case, in the first volume of Lord Coke's reports. What more could be said than is there reported? Indeed, these are the fountains from which all we have has been drawn. Yet what teacher of law has seen fit since to incorporate either of these cases in the assignment of matter for his students to prepare for recitation and discussion in class? Indeed, it is evident to all that the law is too large a subject for such a method, and life is too short to study law in that way. In the preface to his first volume, Lord Coke said: "In these reports I have (of purpose) not observed one method, to the end that, in some other edition (if God so please), I may follow the form that the learned shall allow of, and will sequester my own opinion; for it may be I should prefer those reports which are less painful, and yet (perhaps) no less profitable." It would seem that his conclusion from his experiment was that the more compendious report is the more profitable, for we notice a very decided tendency to brevity in his later reports, and finally he abandoned the case system entirely and devoted himself to the writing of his celebrated commentaries or institutes.

One objection often heard to abridging the reports of cases students are asked to study is that it does not give the student a correct view, which can be had only by seeing the case entire. A moment's thought would prevent anyone making such a statement. No one ever saw a case reported entire; the official reports are themselves only abridgments. The law library of the University of Michigan contains a printed report of the case of Perrin v. Lepper boiled down to sixteen volumes of about 1000 pages each; but in the official reports most cases are even further abridged, the extent of the abridgment depending on the purpose and discretion of the reporter. Others say that the opinion of the court at least should be given entire; yet most of those who say this profess a fondness and preference for the English decisions because of the succinct and logical statements of arguments and conclusions found in the English reports; which, as we all know, is due largely to the fact that the reporter does not give the opinions of the judges in full, but revises the language, and prints only what he deems of general interest. Their preference for the old cases, in which this policy was practised even more extensively than in these days of cheap printing, is also noticeable. There are many reasons why cases for students should not be given even as fully as in the official reports, for example: the official reporter addresses himself to readers for all purposes, the teacher is instructing on one subject; the judges do not speak to give instruction on law, but because the parties are entitled to know how their case is decided and why; judges do not always stop here, the teacher's report of a case certainly should.

Another reason often given for asking the student to read great masses of undigested material is that he will find it so in practice and should learn in school how to use it. Thus many are persuaded; but the statement is not true. No one but the under-graduate law student ever uses such material. The reporter has the record and briefs of counsel, which time and space forbid to the student. The lawyer has abridgments of these generally, and always the reporter's syllabi; which would be depended on by the indolent student, and would be a stumbling-block to all students. The lawyer with a question to examine does not have a book of selected cases on it put into his hand to read, nor does he take down and ransack the reports of decided cases to find the answer to his question. Generally he has a glimmering notion as to what the law is; what he wants is authority for it, and a precise statement of the doctrine. For both of these he looks first to his texts, digests, etc., and then to the reports of decisions there cited. Then he reads—not like the student, one case on each of many points taken up in succession—but many cases all centering about one point.

Further, the purpose of the student and the purpose of the lawyer are wholly different, in fact the reverse. The lawyer starts with the facts and seeks the decision of the law upon them; the student starts with the decision of the law and seeks to learn its application

to facts—if by studying cases, it is to appreciate its application to other facts, if by studying a text it is to appreciate its application to any facts. The decision is put into the hands of the student; the lawyer must find it. Whatever merits there may be in the so-called case system of studying law now in vogue, it is evident that there is no foundation for the claim that it is the natural or practical method. A more practical case method would be to put into the hands of the student a book of undecided cases involving close questions; but with no indication of what the question is or where to find the answer; both of which the student is asked to give. Or better yet, let him learn the facts from the student who witnessed them; and then let him discover his rights and remedies, and pursue them to judgment and execution, as our students do in our practice court. While such a case system of studying law would be severely practical, it probably would not be practicable as a sole or general method of study.

This book is not offered as a solution of the difficulties of the law student and teacher, nor is anything claimed for it. Frankly, it is an experiment, made with the hope of presenting a more connected and general view of the subject than can be acquired by reading cases unabridged, of which the student can read but few on a topic, nor even one on each topic, without infringing on the time due to other courses. It is hoped and believed, also, that a more definite, concrete, and precise knowledge of the law will be obtained from reading such a book than could be acquired by studying a text of the same size. As it is a departure from accustomed lines, opposition and criticism are expected. If this experiment is not successful, perhaps another may get from it a hint that will suggest a better plan.

In selecting the cases to be abridged, an effort has been made to choose those that have drawn the most attention, comment, and citation. The reputation of each case is shown to the reader in part by reference to the various collections of important cases on crimes in which it has been included. Probably many cases have been included which more mature deliberation would have excluded, and as many omitted which should have been included. For this and other errors the charity of the reader is requested. Especial acknoweldgment is due to Miss G. E. Woodard, assistant law librarian, for making the table of cases, for adding the parallel citations, and for much other assistance in getting the matter into type.

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