

DIGEST OF LAW COMMISSION.

SELECTIONS.

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FIRST REPORT OF THE COMMISSIONERS.

To the Queen's most Excellent Majesty.

We, your Majesty's Commissioners appointed "to enquire into the expediency of a Digest of the law, and the best means of accomplishing that object, and of otherwise exhibiting in a compendious and accessible form the law as embodied in Judicial Decisions," humbly submit to your Majesty this our first report.

I.—By the term Law, as used in your Majesty's Commission, we understand the Law of England, comprising the whole Civil Law, in whatever Courts administered, the Criminal Law, the Law relating to the Constitution, Jurisdiction, and Proceedure of Courts (including the Law of Evidence), and Constitutional Law.

In each of these divisions are comprised Laws derived from three distinct sources:

1. The first source is the Common Law, which consists of customs and principles, handed down from remote times, and accepted from age to age, as furnishing rules of legal right.

2. The second source is the Statute Law, which derives its authority from the Legislature.

3. The third source is the Law embodied in, and to a great extent created by Judicial Decisions and Dicta. These, indeed, as far as they have relation to the Common Law and Statute Law, are not so much a source of law, as authoritative expositions of it; but, with respect to doctrines of Equity and rules of procedure and evidence, they may often be regarded as an original source of Law.

That serious evils arise from the extent and variety of the materials, from which the existing Law has to be ascertained, must be obvious from the following considerations:—

The records of the Common Law are in general destitute of method, and exhibit the Law only in a fragmentary form.

The Statute Law is of great bulk. In the quarto edition in ordinary use, known as Ruffhead's, with its continuations, there are 45 volumes, although (particularly in the earlier period) a large quantity of matter is wholly omitted, or given in an abbreviated form, as having ceased to be in force. The contents of these volumes form one mass, without any systematic arrangement, the Acts being placed in merely chronological order, according to the date of enactment, in many cases the same Act containing provisions on heterogeneous subjects. A very large portion of what now stands printed at length has been repealed, or has expired, or otherwise ceased to be in force. There is no thorough severance of effective from non-effective enactments, nor does there exist in a complete form any authoritative index, or other guide by the aid

of which they may be distinguished. Much, too contributes to swell the Statute Book, which is of a special or local character, and cannot be regarded as belonging to the general Law of England.

The Judicial Decisions and Dicta are dispersed through upwards of 1300 volumes, comprising, as we estimate, nearly 100,000 cases, exclusive of about 150 volumes of Irish Reports, which deal to a great extent with Law common to England and Ireland. A large proportion of these cases are of no real value as sources or expositions of Law at the present day. Many of them are obsolete; many have been made useless by subsequent statutes, by amendment of the Law, repeal of the statutes on which the cases were decided, or otherwise; some have been reversed on appeal or overruled in principle; some are inconsistent with or contradictory to others; many are limited to particular facts, or special states of circumstances furnishing no general rule; and many do no more than put a meaning on mere singularities of expression in instruments (as wills, agreements, or local Acts of Parliament), or exhibit the application in particular instances of established rules of construction. A considerable number of the cases are reported many times over in different publications, and there often exist (especially in earlier times) partial reports of the same case at different stages, involving much repetition. But all this matter remains encumbering the Books of Reports. The cases are not arranged on any system: and their number receives large yearly accessions, also necessarily destitute of order; so that the volumes constitute (to use the language of one of your Majesty's Commissioners) "what can hardly be described, but may be denominated a great chaos of judicial legislation."

At present the practitioner, in order to form an opinion on any point of Law not of ordinary occurrence, is usually obliged to search out what rules of the Common Law, what Statutes, and what Judicial Decisions bear upon the subject, and to endeavor to ascertain their combined effect. If, as frequently happens, the cases are numerous, this process is long and difficult; yet it must be performed by each practitioner, for himself, when the question arises; and in some cases, after an interval of time, it may have even to be repeated by the same person. Without treatises, which collect and comment on the Law relating to particular subjects, it is difficult to conceive how the work of the Legal profession and the administration of Justice, which greatly depends on it, could be carried on; but, however excellent such separate treatises may be, they do not give the aid and guidance that would be afforded by a complete exposition of the Law in a uniform shape.

* Speech of the Lord Chancellor (Lord Westbury) on the Revision of the Law, House of Lords. 12th June 1863. Stevens and Norton. Page 8.