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THE WORKS OF  
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UNITED STATES, AND PROFESSOR OF LAW IN  
THE COLLEGE OF PHILADELPHIA

BEING HIS PUBLIC DISCOURSES UPON

JURISPRUDENCE AND THE POLITICAL SCIENCE

INCLUDING LECTURES AS PROFESSOR OF LAW, 1790-2

EDITED BY

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## CHAPTER VI.

### OF CRIMES, AFFECTING SEVERAL OF THE NATURAL RIGHTS OF INDIVIDUALS.

THOSE crimes and offences of which I have already treated, attack some *one* of the natural rights of man or of society: there are other crimes and offences, which attack *several* of those natural rights. Of these, nuisances are the most extensive and diversified.

A nuisance denotes anything, which produces mischief, injury, or inconveniencè. It is divided into two kinds—common and private.<sup>1</sup> The latter will be treated under the second division of my system: it is a damage to property. Common nuisances are a collection of personal injuries, which annoy the citizens generally and indiscriminately—so generally and indiscriminately, that it would be difficult to assign to each citizen his just proportion of redress; and yet, on the whole, so “noisome,” that public peace, and order, and tranquillity, and safety require them to be punished or abated.

On this subject, and, I believe, on this subject alone, the common law makes no distinction between a person and a thing. The exquisite propriety, with which the distinction is lost in this subject, proves strongly the importance of preserving it in every other. The exception establishes the rule.

How degraded are persons when they deserve to be

<sup>1</sup> 3 Bl. Com. 216. <sup>4</sup> Bl. Com. 166.



classed with things ! We have seen, on a former occasion,<sup>1</sup> that—1. The duellists and the promoters of duels are ranked with the offals of the shambles. The station is, indeed, a most humiliating one. Let no station, however, yield to absolute despair. From the very lowest depression, as well as from the very highest exaltation, there is a return in a contrary course. In pure compassion for the degraded hero, let us give him at least one grade of promotion. Perhaps, by vigorous exertion, he may become qualified for his advanced dignity. The quarreller or promoter of quarrels of one sex, may behave so as to reflect no great disgrace on the common scold of the other. She, too, is a common nuisance.

2. A common scold, says the law, is a public nuisance to her neighborhood : as such she may be indicted, and, if convicted, shall be placed in a certain engine of correction, called the trebucket, castigatory, or *cucking* stool ; which, in the Saxon language, signifies the scolding stool ; though now it is frequently corrupted into *ducking* stool ; because the residue of the sentence against her is, that when she is thus placed, she shall be plunged in the water<sup>2</sup>—for the purpose of prevention, it is presumed, as well as of punishment.

Our modern man of gallantry would not surely decline the honor of her company. I therefore propose humbly, that, in future, the cucking stools shall be made to hold double.

3. Eavesdroppers too, another set of honorable associates—such as listen under walls, or windows, or eaves of a house, in order to hear the discourse of the family, and from that discourse to frame tales, mischievous and slanderous—these are common nuisances : they may be indicted as such ; and as such may be punished by fine and finding sureties for their good behavior.<sup>3</sup>

<sup>1</sup> Ante, p. 400.

<sup>2</sup> 4 Bl. Com. 163.

<sup>3</sup> Id. *ibid.*

It is whispered to me, that the expression "eavesdroppers" must refer to a very early and a very simple state of society, when people lived in cabins or huts: because, when people live in three-story houses, it would be rather awkward to listen at their eaves in order to learn the secrets of families. It is therefore suggested, that, as the common law is remarkable for its adroitness in accommodating itself to the successive manners of succeeding ages, a small alteration should be made in the description of this nuisance, in order to suit it to the present times; and that the tea-table should be substituted in the place of the eaves of the house. I declare I have not the remotest objection to the proposal; provided the wine tables, whenever they merit it, be of the party.

4. To keep hogs in any city or market town is a common nuisance.<sup>1</sup>

5. Disorderly houses are public nuisances; and, upon indictment, may be suppressed and fined.<sup>2</sup>

6. Everything offensive and injurious to the health of a neighborhood is a common nuisance; is liable to a public prosecution; and may be punished by fine according to the quantity of the misdemeanor.<sup>3</sup>

7. Annoyances in highways, bridges, and public rivers are likewise common nuisances.<sup>4</sup> Other kinds might be enumerated.

Indecency, public and grossly scandalous, may well be considered as a species of common nuisance: it is certainly an offence, which may be indicted and punished at the common law.<sup>5</sup>

Profaneness and blasphemy are offences, punishable by fine and by imprisonment. Christianity is a part of the common law.<sup>6</sup>

<sup>1</sup> 4 Bl. Com. 167.

<sup>2</sup> Id. *ibid.*

<sup>3</sup> Id. *ibid.*

<sup>4</sup> Id. *ibid.*

<sup>5</sup> 1 Haw 7. 1 Sid. 168. Wood Ins. 412.

<sup>6</sup> 2 Str. 834.

4 Bl. Com. 59.



## CHAPTER VII.

### OF CRIMES AGAINST THE RIGHTS OF INDIVIDUALS ACQUIRED UNDER CIVIL GOVERNMENT.

UNDER civil government, one is entitled not only to those rights which are natural; he is entitled to others which are acquired. He is entitled to the honest administration of the government in general: he is entitled, in particular, to the impartial administration of justice. Those rights may be infringed: the infringements of them are crimes. These we next consider.

1. Extortion is the taking of money by any officer, by color of his office, either where none is due, or where less is due, or before it is due. At common law, this crime may be severely punished by fine and imprisonment, and by a removal from the office, in the execution of which it was committed.<sup>1</sup>

2. Oppression under color of office is a crime of still more extensive and of still more malignant import. Tyrannical partiality is generally its infamous associate. These, at the common law, may be punished with fine, with imprisonment, with forfeiture of office, and with other discretionary censure regulated by the nature and the aggravations of the crimes.<sup>2</sup>

By a law of the United States, it is enacted, that if any supervisor or other officer of inspection of the excise shall be convicted of extortion or oppression in the exe-

<sup>1</sup> 1 Elaw. 170, 171.

<sup>2</sup> 4 Bl. Com. 140.