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CHAPTER XIII.

OF OFFENCES AGAINST THE PUBLIC HEALTH, AND THE PUBLIC POLICE OR ECONOMY.

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The fourth species of offences more especially affecting the commonwealth are such as are against the public *health* of the [*161 nation; a concern of the highest importance, and for the preservation of which there are in many countries special magistrates or curators appointed.

1. The first of these offences is a felony, but, by the blessing of Providence, for more than a century past incapable of being committed in this nation: for, by statute 1 Jac. I. c. 31, it is enacted that, if any person infected with the plague, or dwelling in any infected house, be commanded by the mayor or constable, or other head officer, of his town or vill, to keep his house, and shall venture to disobey it, he may be enforced, by the watchmen appointed on such melancholy occasions, to obey such necessary command; and, if any hurt ensue by such enforcement, the watchmen are thereby indemnified. And further, if such person so commanded to confine himself goes abroad and converses in company, if he has no plague-sore upon him, he shall be punished as a vagabond by whipping, and be bound to his good behaviour; but, if he has any infectious sore upon him, uncured, he then shall be guilty of felony. By the statute 26 Geo. II. c. 26, (explained and amended by 29 Geo. II. c. 8,) the method of performing *quarantine,* or forty days' probation, by ships coming from infected countries, is put in a much more regular and effectual order than formerly, and masters of ships coming from infected places and disobeying the directions there given, *
or having the plague on board and concealing it, are guilty of [*162 felony without benefit of clergy. The same penalty also attends persons escaping from the *lazarets,* or places wherein quarantine is to be performed; and officers and watchmen neglecting their duty; and persons conveying goods or letters from ships performing quarantine.[1]

2. A second, but much inferior, species of offence against public health is the selling of *unwholesome provisions*.[2] To prevent which, the statute 51 Hen. III. st. 6, and the ordinance for bakers, c. 7, prohibit the sale of corrupted wine, contagious or unwholesome flesh, or flesh that is bought of a Jew, under pain of amercement for the first offence, pillory for the second, fine and imprisonment for the third, and abjuration of the town for the fourth.[3] And, by the statute 12 Car. II. c. 25, § 11, any brewing or adulteration of wine is punished with the forfeiture of 100*l.* if done by the wholesale merchant, and 40*l.* if done by the vintner or retail trader.[4] These are all the offences which may properly be said to respect the public health.

V. The last species of offences which especially affect the commonwealth are those against the public *police* or *economy*. By the public police and economy I mean the

due regulation and domestic order of the kingdom, whereby the individuals of the state, like members of a well-governed family, are bound to conform their general behaviour to the rules of propriety, good neighbourhood, and good manners, and to be decent, industrious, and inoffensive in their respective stations. This head of offences must therefore be very miscellaneous, as it comprises all such crimes as especially affect public society and are not comprehended under any of the four preceding species. These amount some of them to felony, and others to misdemeanours only. Among the former are,—

1. The offence of *clandestine marriages:* for, by the statute 26 Geo. II. c. 33, 1. To solemnize marriage in any other place besides a church or public chapel wherein banns have been usually published, except by license from the archbishop of * Canterbury; and, 2. To solemnize marriage in such church or chapel without due publication of banns, or license obtained from a proper authority, do both of them not only render the marriage void, but subject the person solemnizing it to felony, punished by transportation for fourteen years; as, by three former statutes,(a) he and his assistants were subject to a pecuniary forfeiture of 100*l.* 3. To make a false entry in a marriage-register; to alter it when made; to forge or counterfeit such entry, or a marriage-license; to cause, or procure, or act or assist in such forgery; to utter the same as true, knowing it to be counterfeit; or to destroy or procure the destruction of any register, in order to vacate any marriage or subject any person to the penalties of this act; all these offences, knowingly and wilfully committed, subject the party to the guilt of felony without benefit of clergy.5

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2. Another felonious offence with regard to this holy estate of matrimony is what some have corruptly called *bigamy,* which properly signifies being twice married, but is more justly denominated *polygamy,* or having a plurality of wives at once.(b) Such second marriage, living the former husband or wife, is simply void, and a mere nullity, by the ecclesiastical law of England; and yet the legislature has thought it just to make it felony, by reason of its being so great a violation of the public economy and decency of a well-ordered state. For polygamy can never be endured under any rational civil establishment, whatever specious reasons may be urged for it by the eastern nations, the fallaciousness of which has been fully proved by many sensible writers: * but in northern countries the very nature of the climate seems to reclaim against it, it never having obtained in this part of the world, even from the time of our German ancestors, who, as Tacitus informs us,(c) "*prope soli barbarorum singulis uxoribus contenti sunt.*" It is therefore punished by the laws both of antient and modern Sweden with death.(d) And with us in England it is enacted, by statute 1 Jac. I. c. 11, that if any person, being married, do afterwards marry again, the former husband or wife being alive, it is felony, but within the benefit of clergy. The first wife in this case shall not be admitted as a witness against her husband, because she is the true wife; but the second may, for she is indeed no wife at all;(e) and so *vice versa* of a second husband. This act makes an exception to five cases in which such second marriage, though in the three first it is void, is yet no felony.(f) 1. Where either party hath been continually *abroad* for seven years, whether the party in England hath notice of the other's being living or no. 2. Where either of the parties hath been absent from the other seven years *within* this kingdom, and the

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remaining party hath had no knowledge of the other's being alive within that time. 3. Where there is a divorce (or separation *a mensa et thoro*) by sentence in the ecclesiastical court. 4. Where the first marriage is declared absolutely void by any such sentence, and the parties loosed *a vinculo.* Or, 5. Where either of the parties was under the age of consent at the time of the first marriage; for in such case the first marriage was voidable by the disagreement of either party, which the second marriage very clearly amounts to. But if at the age of consent the parties had agreed to the marriage, which completes the contract, and is, indeed, the real marriage, and afterwards one of them should marry again, I should apprehend that such second marriage would be within the reason and penalties of the act.6

3. A third species of felony against the good order and * economy of the kingdom is by idle *soldiers* and *mariners* *wandering* about the realm, or persons pretending so to be, and abusing the name of that honourable profession.(g) Such a one, not having a testimonial or pass from a justice of the peace limiting the time of his passage, or exceeding the time limited for fourteen days, unless he falls sick, or forging such testimonial, is, by statute 39 Eliz. c. 17, made guilty of felony without benefit of clergy. This sanguinary law, though in practice deservedly antiquated, still remains a disgrace to our statute-book, yet attended with this mitigation, that the offender may be delivered, if any honest freeholder or other person of substance will take him into his service, and he abides in the same for one year, unless licensed to depart by his employer, who in such case shall forfeit ten pounds.7

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4. Outlandish persons calling themselves *Egyptians* or *gypsies* are another object of the severity of some of our unrepealed statutes. These are a strange kind of commonwealth among themselves of wandering impostors and jugglers, who were first taken notice of in Germany about the beginning of the fitteenth century, and have since spread themselves all over Europe. Munster,(h) who is followed and relied upon by Spelman(i) and other writers, fixes the time of their first appearance to the year 1417, under passports, real or pretended, from the emperor Sigismund, king of Hungary. And pope Pius II. (who died ad 1464) mentions them in his history as thieves and vagabonds, then wandering with their families over Europe under the name of Zigari, and whom he supposes to have migrated from the country of Zigi, which nearly answers to the modern Circassia. In the compass of a few years they gained such a number of idle proselytes (who imitated their language and complexion, and betook themselves to the same arts of chiromancy, begging, and pilfering) that they became troublesome, and even formidable, to most of the states of Europe. Hence they were expelled from France in the year 1560, and from Spain in 1591.(k) And the government in England took the alarm much earlier, for in 1530 they are described, by statute 22 Hen. VIII. c. 10, as "outlandish people, calling themselves * Egyptians, using no craft nor feat of merchandise, who have come into this realm, and gone from shire to shire and place to place in great company, and used great, subtil, and crafty means to deceive the people, bearing them in hand that they by palmestry could tell men's and women's fortunes, and so many times, by craft and subtility, have deceived the people of their money, and also have committed many heinous felonies and robberies." Wherefore they are directed to avoid the realm, and not to return, under pain of imprisonment, and

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forfeiture of their goods and chattels; and upon their trials for any felony which they may have committed, they shall not be entitled to a jury *de medietate linguæ.* And afterwards, it is enacted, by statute 1 & 2 P. and M. c. 4, and 5 Eliz. c. 20, that if any such persons shall be imported into this kingdom, the importer shall forfeit 40*l.* And if the Egyptians themselves remain one month in this kingdom, or if any person, being fourteen years old, (whether natural-born subject or stranger,) which hath been seen or found in the fellowship of such Egyptians, or which hath disguised him or herself like them, shall remain in the same one month, at one or several times, it is felony without benefit of clergy: and Sir Matthew Hale informs us(*l*) that at one Suffolk assizes no less than thirteen gypsies were executed upon these statutes, a few years before the restoration. But, to the honour of our national humanity, there are no instances more modern than this of carrying these laws into practice.8

5. To descend next to offences whose punishment is short of death. *Common nuisances* are a species of offence against the public order and economical regimen of the state, being either the doing of a thing to the annoyance of all the king's subjects, or the neglecting to do a thing which the common good requires.(*m*) The nature of *common* nuisances and their distinction from *private* nuisances were explained in the *
preceding volume,(*n*) when we considered more particularly the [*167
nature of the private sort as a civil injury to individuals. I shall here only remind the student that common nuisances are such inconvenient and troublesome offences as annoy the whole community in general, and not merely some particular person, and therefore are indictable only, and not actionable, as it would be unreasonable to multiply suits by giving every man a separate right of action for what damnifies him in common only with the rest of his fellow-subjects. Of this nature are, 1. Annoyances in *highways, bridges,* and public *rivers,* by rendering the same inconvenient or dangerous to pass, either positively, by actual obstructions, or negatively, by want of reparations.9 For both of these, the person so obstructing, or such individuals as are bound to repair and cleanse them, or (in default of these last) the parish at large, may be indicted, distrained to repair and mend them, and in some cases fined. And a presentment thereof by a judge of assize, &c., or a justice of the peace, shall be in all respects equivalent to an indictment.(*o*) Where there is a house erected or an enclosure made upon any part of the king's demesnes, or of a highway or common street, or public water, or such like public things, it is properly called a *purpresture.*(*p*)10 2. All those kinds of nuisances (such as offensive trades and manufactures) which, when injurious to a private man, are actionable, are, when detrimental to the public, punishable by public prosecution, and subject to fine according to the quantity or the misdemeanour; and particularly the keeping of hogs in any city or market town is indictable as a public nuisance.(*q*)11 All disorderly *inns* or *ale-houses, bawdy-houses, gaming-houses, stage-plays,* unlicensed booths, and stages for *rope-dancers, mountebanks,* and the like, are public nuisances, and may, upon indictment, be suppressed and fined.(*r*)12 Inns in particular, being intended for the lodging and receipt of travellers, may be indicted, suppressed, and the *
inn-keepers fined, if they refuse to entertain a traveller without a [*168
very sufficient cause; for thus to frustrate the end of their institution is held to be disorderly behaviour.(*s*) Thus, too, the hospitable laws of Norway punish, in the severest degree, such inn-keepers as refuse to furnish

accommodations at a just and reasonable price.(*t*) 4. By statute 10 & 11 W. III. c. 17, all *lotteries* are declared to be public nuisances, and all grants, patents, or licenses for the same to be contrary to law. But, as state lotteries have, for many years past, been found a ready mode for raising the supply, an act was made, 19 Geo. III. c. 21, to license and regulate the keepers of such lottery-offices.13 5. The making and selling of *fire-works* and *squibs,* or throwing them about in any street, is, on account of the danger that may ensue to any thatched or timber buildings, declared to be a common nuisance by statute 9 & 10 W. III. c. 7, and therefore is punishable by fine.14 And to this head we may refer (though not declared a common nuisance) the making, keeping, or carriage of too large a quantity of *gunpowder* at one time or in one place or vehicle, which is prohibited by statute 12 Geo. III. c. 61, under heavy penalties and forfeiture.15 6. *Eaves-droppers,* or such as listen under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales, are a common nuisance, and presentable at the court-leet,(*u*) or are indictable at the sessions, and punishable by fine and finding sureties for their good behaviour.(*v*) 7. Lastly, a *common scold, communis rixatrix,* (for our law-Latin confines it to the feminine gender,) is a public nuisance to her neighbourhood. For which offence she may be indicted,(*w*) and, if convicted, shall(*x*) be sentenced to be placed in a certain engine of correction called the trebucket, castigatory, or *cucking*-stool, which, in the Saxon language, is said to signify the scolding-stool, though now it is frequently corrupted into *ducking*-stool, because the residue of the judgment is, that, when she is so placed therein, she shall be plunged in the water for her punishment.(*y*)

6. *

Idleness in any person whatsoever is also a high offence against the public economy. In China it is a maxim that if there be a man who does not work, or a woman that is idle, in the empire, somebody must suffer cold or hunger, the produce of the lands not being more than sufficient, with culture, to maintain the inhabitants; and, therefore, though the idle person may shift off the want from himself, yet it must in the end fall somewhere. The court also of Areopagus, at Athens, punished idleness, and exerted a right of examining every citizen in what manner he spent his time; the intention of which was,(*z*) that the Athenians, knowing they were to give an account of their occupations, should follow only such as were laudable, and that there might be no room left for such as lived by unlawful arts. The civil law expelled all sturdy vagrants from the city:(*a*) and, in our own law, all idle persons or vagabonds, whom our antient statutes describe to be "such as wake on the night and sleep on the day, and haunt customable taverns and ale-houses, and routs about, and no man wot from whence they came nor whither they go," or such as are more particularly described by statute 17 Geo. II. c. 5, and divided into three classes,—*idle* and *disorderly* persons, *rogues* and *vagabonds,* and *incorrigible rogues:* all these are offenders against the good order and blemishes in the government of any kingdom. They are therefore all punished by the statute last mentioned; that is to say, idle and disorderly persons with one month's imprisonment in the house of correction; rogues and vagabonds with whipping and imprisonment not exceeding six months; and incorrigible rogues with the like discipline and confinement not exceeding two years; the breach and escape from which confinement in one of an inferior class ranks him among incorrigible rogues, and in a rogue (before

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incorrigible) makes him a felon and liable to be transported for seven years. Persons harbouring vagrants are liable to a fine of forty shillings, and to pay all expenses brought upon the parish thereby; in the same *
manner as, by our antient laws, whoever harboured any stranger for more than two nights was answerable to the public for any offence that such his inmate might commit.(*b*)16 *170]

7. Under the head of public economy may also be properly ranked all sumptuary laws against *luxury,* and extravagant expenses in dress, diet, and the like; concerning the general utility of which to a state, there is much controversy among the political writers. Baron Montesquieu lays it down(*c*) that luxury is necessary in monarchies, as in France; but ruinous to democracies, as in Holland. With regard therefore to England, whose government is compounded of both species, it may still be a dubious question how far private luxury is a public evil, and, as such, cognizable by public laws. And, indeed, our legislators have several times changed their sentiments as to this point; for formerly there *
were a multitude of penal laws existing to restrain excess in apparel;(*d*) chiefly made in the reigns of Edward the Third, *171]
Edward the Fourth, and Henry the Eighth, against piked shoes, short doublets, and long coats; all of which were repealed by statute 1 Jac. I. c. 25. But as to excess of diet there still remains one antient statute unrepealed, 10 Edw. III. st. 3, which ordains that no man shall be served at dinner or supper with more than two courses, except upon some great holidays, there specified, in which he may be served with three.

8. Next to that of luxury naturally follows the offence of *gaming,* which is generally introduced to supply or retrieve the expenses occasioned by the former; it being a kind of tacit confession that the company engaged therein do, in general, exceed the bounds of their respective fortunes; and therefore they cast lots to determine upon whom the ruin shall at present fall, that the rest may be saved a little longer. But, taken in any light, it is an offence of the most alarming nature, tending by necessary consequence to promote public idleness, theft, and debauchery among those of a lower class; and among persons of a superior rank it hath frequently been attended with the sudden ruin and desolation of antient and opulent families, an abandoned prostitution of every principle of honour and virtue, and too often hath ended in self-murder.17 To restrain this pernicious vice among the inferior sort of people, the statute 33 Hen. VIII. c. 9 was made; which prohibits to all but gentlemen the games of tennis, tables, cards, dice, bowls, and other unlawful diversions there specified,(*e*) unless in the time of Christmas, under pecuniary pains and imprisonment. And the same law, and also the statute 33 Geo. II. c. 24, inflict pecuniary penalties, as well upon the master of any public house where servants are permitted to game, as upon the servants themselves who *
are found to be gaming there. But this is not the principal ground of modern complaint; it is the gaming in high life that demands [*172
the attention of the magistrate; a passion to which every valuable consideration is made a sacrifice, and which we seem to have inherited from our ancestors the antient Germans; whom Tacitus(*f*) describes to have been bewitched with a spirit of play to a most exorbitant degree. “They addict themselves,” says he, “to dice (which is wonderful) when sober, and as a serious employment, with such a mad desire of