

CHAPTER XXXVI.

COMMON NUISANCES.

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1. The offense of common nuisance is the endangering of the public personal safety or health, or doing, causing, or promoting, maintaining or continuing what is offensive, or annoying and vexatious, or plainly hurtful to the public, or is a public outrage against common decency or common morality, or tends plainly and directly to the corruption of the morals, honesty and good habits of the people, the same being without authority or justification by law.

As, for example, the carrying on a trade, manufacture or business in places so situated that others indiscriminately, who reside in the vicinity, or pass a highway or public place, or resort to a school house, meeting house or any other place of legal and usual resort or assembly, are liable to be thereby injured, annoyed, disturbed or endangered by deleterious exhalations, noisome vapors, hideous, alarming or disgusting sights, intolerable noise, or otherwise :

By spreading or endangering the spreading of the small pox, or other infectious disease ; by carrying an infected person, or causing him to pass through a frequented street ; by opening a hospital or pest house so as to endanger neighbors or the passers by in a frequented street, or otherwise :

Making or storing gunpowder in or near a populous, or public or frequented place, without authority therefor, or the otherwise making or storing the same contrary to law :

Making loud and troublesome noises by night :

Keeping animals that disturb the neighborhood by night :

Permitting ferocious or dangerous animals to go abroad :

Keeping a bawdy house :

Open lewdness or lascivious behavior, or indecent exposure :

Keeping a common gambling house :

Keeping a disorderly house, to the public disturbance and annoyance.

2. Occasioning a groundless fear or merely a trivial annoyance or inconvenience is not a common nuisance. Whether the act or thing is really so hurtful or prejudicial to others as to render it a common nuisance is a question of fact to be determined by the jury, court or magistrate called to pass upon the same.

3. Where only a few persons, of many who are equally exposed, are, owing to their peculiarity of temperament, or to infirmity, annoyed by an act or thing, the same is not a nuisance.

As where the noise of a tinman's shop annoys but a few of many persons equally within hearing.

4. Obstructing a highway, channel, entrance to a harbor, harbor, town way, navigable stream, or public place, without just cause, is a common nuisance.

As by digging a ditch, laying logs, erecting a gate or placing any other impediment in a highway :

By leaving carts or other vehicles standing in the highway an unreasonable time :

By using the highway as a timber yard, or a yard to a storehouse, or as a place to dry hides :

By erecting or maintaining a building, fence or structure within the limits of a highway or a public place :

By overflowing a highway :

By rapid or unskillful driving, or driving an unmanageable team on the highway and thereby endangering life :

By tying horses or other animals in the public streets for the purpose of grazing.

5. Reasonable use of a highway as such is not a common nuisance : As, for example, unloading wood to put the same into a house standing near the highway, if it does not occupy an unreasonable portion of the highway, and is not left for an unseasonable, or for an unreasonable time.

6. The firing, letting off or throwing of any rockets, squibs, crackers, or other fireworks in or near to frequented public highways or places of common resort, or the dwellings of others, or otherwise, to the annoyance and endangering of persons, or the endangering the destruction of or injury to property, is a common nuisance, except the same are fired, let off or thrown by license of the Governor, or in his absence, of the police justice of the town, and in conformity with such license.

7. The importing, printing, publishing, selling, offering for sale, putting into circulation, distributing, lending, exhibiting publicly, or introducing into any family, school or place of education, any obscene picture, or pamphlet, sheet or other thing containing obscene language, obscene prints, figures, descriptions or representations, manifestly tending to the corruption of the morals of youth, or of morals generally ; or buying, procuring, receiving or having in possession, any such picture, book, pamphlet, sheet or other thing, with intent to sell, circulate, distribute, lend, or exhibit the same, or to introduce the same into any family, school or place of education, is a common nuisance.

8. The offense of common nuisance is of two degrees, and the degree is to be found by the jury, or determined by the court or magistrate authorized to decide on the facts ; and so also the degree is to be determined by the court before which proceedings are had, where the facts charged are admitted by plea or otherwise.

9. Whoever is guilty of the offense of common nuisance in the first degree, for which punishment is not otherwise expressly provided by statute, shall be punished by imprisonment at hard labor not more than six months, or by fine not exceeding five hundred dollars.

10. Whoever is guilty of the offense of common nuisance in the second degree, for which punishment is not otherwise expressly provided by statute, shall be punished by imprison-

ment at hard labor not more than two months, or by fine not exceeding twenty-five dollars.

11. Where the lessee of a building makes the same a bawdy house, the lease or contract for letting the same shall at the option of the lessor become void, and the lessor shall thereupon have a like remedy for recovering possession, as against a tenant holding over after the expiration of his term ; and moreover shall be entitled to rent for the whole term.

12. Any justice of a police or district court, may issue a search warrant for the purpose of searching for any obscene books, pamphlets, pictures, or other things containing obscene language, prints, pictures, figures, or descriptions manifestly tending to the corruption of the morals of youth ; and all such things as may be found by any officer in executing such warrant, or that may otherwise come to the possession of any officer, shall be safely kept, so long as shall be necessary for the purpose of being used as evidence in any case, and as soon as may be afterwards shall be destroyed by order of the court before whom the same shall be brought.
