A LECTURE BEING THE SECOND OF A SERIES OF LECTURES, INTRODUCTORY TO A COURSE OF LECTURES; PP.3-49

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by David Hoffman

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DAVID HOFFMAN

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LECTURE

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Series of Lectures,

INTRODUCTORY TO A

COURSE OF LECTURES

NOW DELIVERING IN THE

UNIVERSITY OF MARYLAND.

BY DAVID HOFFMAN.

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SECOND

INTRODUCTORY LECTURE.

In my first Introductory Discourse, delivered in this place, besides the general topicks suggested by the enterprize in which I am engaged, I endeavoured to show you the essential connexion between the various subjects embraced in the First and Second Titles of the Syllabus of these Lectures; these titles comprehending first, *Metaphysicks, Ethicks*, and *Natural Law*;—secondly, the learning of the *Feudists*, and what has been technically called the *Doctrine of the Realty*. In pointing your attention to the *first* class of subjects, I aimed to impress on your minds their great importance, and how intimately akin they are to the proper studies of the accomplished lawyer. In that lecture I endeavoured to illustrate their utility; the links by which they are associated; and the necessity of proceeding in your studies methodically, from the contemplation of

the foundations of *moral obligation*, in the original structure of the mind, to the view of these obligations as they are contemplated or modified in *society*, whether of *individuals* or of *nations*. Your attention was then carried to that peculiar organization of civil society, called the Feudal System, from which the government and laws of modern communities have taken a permanent tincture; and I endeavoured, in the last place, to indicate more particularly the pervading connexion between the general feudal law, and that refined system of the English Law which affects *landed* property;—a system the whole of whose parts demonstrate its origin and structure to have been feudal; and which is consequently very unintelligible without the aid of feudal learning.

In the present discourse we shall present you with some observations on the connexion of the various subjects embraced under the *Third* Title of the Syllabus; viz. the Law of *Personal Rights, and Personal Remedies;* and as I shall in my succeeding introductory discourses pursue the same plan in regard to the successive titles of the course, they will form a Series of Essays on the general features, leading relations, excellencies, and defects of each of the grand divisions of the law.

This third title or branch of our subject, gentlemen, embraces *first*, personal *rights*, and *secondly*, the means or *remedies* established by law for their assertion; together with a variety of incidental matters, which will be presently mentioned.

Personal *rights* may be considered 1st, in regard to the *individual* or person; 2dly, as they are affected by his *relations* in society; which may be those of husband and wife, parent and child, master and servant, guardian and ward, governor and governed. The *remedies* adopted for the enforcement of these rights, are also susceptible of a great variety of divisions; involving the several topicks of *Courts* and their organization; *Officers* of courts, their duties and powers; the *forms* of action and procedure, denominated *pleading* and *practice;* after which follow, in succession, the modes of *trial;* the requisite *evidence* to sustain them; the *errours* in these proceedings, with the redress by *appeal* &c. to superior tribunals; and lastly, the means of enforcing decisions of courts by *execution*, which is favoured in the law, as it is *fructus, finis et effectus legis,*—the very *life, aim*, and *effect* of the law.

The gradual evolution of these subjects, in the order of their natural connexion, is essential to their right understanding, and their easy attain-

ment. If the ties associating these apparently dissimilar subjects, be not properly regarded, we lose much of the spirit and philosophy which really appertain to them; and we pursue our studies with as little interest as one who travels a labyrinth, ignorant that its numerous windings are in any way connected, or that they all tend to one desired goal. May we not, indeed, attribute much of the *ennui* which even pleasing subjects sometimes occasion, to the limited view we take of their important divisions, to that view which confines the mental eye to the *parts* of a great whole, leaving blanks in the vision at the points of their connexion.

It will be my endeavour, when I come to treat of these topicks, to show with some minuteness these points of association: all that we shall at present attempt, is to exhibit their general relations to each other; and to remove, if possible, some popular grounds of cavil in regard to them.

I would remark in the outset, what is emphatically true in regard to the *lex mercatoria*, and some other branches of English jurisprudence, that the learning of *personal rights and remedies* is much less tinged with feudal principles, and the technicalities growing out of them,—and proceeds much more on the general grounds of *obligation* and *morals*, than does that of the *realty*. Hence