

**THE LAWS OF ENGLAND RELATING TO PUBLIC
HEALTH: INCLUDING AN EPITOME OF THE LAW
OF NUISANCES, POLICE, HIGHWAYS, WATERS,
WATER-COURSES, CORONERS, BURIAL,
&C.RELATING THERETO; WITH AN HISTORICAL
REVIEW OF THE LAW OF SEWERS**

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The Laws of England Relating to Public Health: Including an Epitome of the Law of Nuisances, Police, Highways, Waters, Water-Courses, Coroners, Burial, &C.Relating Thereto; With an Historical Review of the Law of Sewers by J. Toulmin Smith

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J. TOULMIN SMITH

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HISTORICAL REVIEW OF THE LAW OF SEWERS;

AND

AN EXAMINATION OF THE PROPOSED MEASURE OF SANATORY
LEGISLATION NOW BEFORE PARLIAMENT.

By J. TOULMIN SMITH,

OF LINCOLN'S INN, ESQ. SPECIAL PLEADER.



"Ures hlaforðes gæmðnes and his witena is; þæt man riht
lage up-arærc; and ælce unlage georne afdylle; and þæt man
læte beon æghwylcne man rihtes wyrðe."

Lawe of King ETHELRED, v. s. l.

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Law Bookseller and Publisher.

1848.

PREFACE.

THE following pages owe their immediate appearance to the following circumstances. In the first weeks of the present year the Author was placed upon a committee in one of the metropolitan suburbs for inquiring into and reporting upon the sanatory condition of the place, with a view to its improvement. Certain novel and theoretical plans having been urged, and been, indeed, the special object of the formation of that committee, the Author strenuously urged, in opposition to these, that, in all such cases, the true and only proper and effective course was to put in action those constitutional, regular, and legal means which the law affords. Although, however, there were on that committee several professional gentlemen besides the Author, not one of them appeared aware,—several avowed that they were not aware,—what the law relating to these matters actually is, and what legal means do actually exist, in the present state of the law, for promoting sanatory * improvements. The Author

* As a new mode of spelling this word has lately been adopted, a remark on the subject is proper. The first Commission, and the Health of Towns Association in their report, spell it as above. The compounds from "sano" are generally used in English in reference to the mind. Any form of the word is bad therefore, as

having endeavoured briefly to point out those means, and having succeeded in *practically carrying out* the ideas with which he first came forward, it was strongly urged on him that those were matters which it would be useful to make more generally known; that, if so many lawyers on that committee did not know the law, and were surprised to find that it had any vital energy, it was probable that it was as little known among lawyers elsewhere, and, still more, that it was totally unknown to the public generally. On the other hand, it was of pressing importance that its actual vital energy should be well known at a time when Government is about to bring forward measures on the subject.

These representations were weighty; but the short space of time which, if such a work were to be of any service, could be allowed for its preparation, was felt as a strong objection. The end of the matter is here seen; and the Author can only hope that, though it has been impossible, in such a short space of time, to discuss all the topics so fully as could be wished, it may be made sufficiently clear what some of the main principles of the existing law, relative to the promotion of, and the removal of causes injurious to, public health, actually

applied physically, in our language. But "sanity" is *always* applied to the mind (it was also thus employed by Cicero), while "a sanative" is sometimes used for a physical remedy, (so "sanatio" by Cicero). Hence it is clear that "sanatory" is the only admissible form of the word, if it be used at all; and against that use it would now be vain to protest.

are; that so there may be some check on hasty and empirical legislation. How necessary such check is will be seen from some of the facts mentioned in these pages; and, not least, from the gross misconceptions of the functions of Commissioners of Sewers.

The object of these pages is very simple. It is to show that the care, by law, for the public health, and for removing causes injurious to public health, is no new thing: that the law of England has ever had a most careful regard for all that concerns the public health: that the principles of the common law in reference to the matter are clear and decisive, and may be taken as models of what law should truly be in its regard for the welfare of the people. It is, further, to show that though, as manners and customs change with passing time, the *machinery* for carrying out certain principles of law into practice may be modified, those principles, based as they always are on national peculiarities, ought never to be neglected for the sake of introducing novel or speculative doctrines. Thus, it being a principle of the common law that any noxious accumulation is a nuisance which ought to be abated, it may be of little importance whether it be abated, in one age, by the bailiff of the court leet, or, in another, by the inspector of police; but it is of very great importance that new and theoretical remedies, interfering with numerous private rights and honest prejudices, should not be introduced and made compulsory.

The Common Law of England has been, in all ages, the great bulwark of the liberties of Englishmen. It

is just in proportion as the principles of that common law have been neglected or superseded that those liberties have been endangered. And the people are bound to take care that, in the anxiety for sanatory improvement, no fresh invasion of those liberties do take place. For this purpose it is necessary that the principles of the common law be well known to the people themselves;—and it is desired to be understood that these pages are addressed, for that purpose, to the general reader; and that it has, therefore, been endeavoured to divest them of technical treatment.

The great importance of true and active sanatory measures must be recognized by every one. But such measures should be practical, not theoretical. The Author has been the means of showing to one metropolitan district that the law of England, *as it now exists*, offers the efficient means, to all men who are in earnest, for working out *practical* sanatory improvement.

Some men are so sluggish, or so wanting in moral courage, that they shrink from bestirring themselves in any such work. Such are the men who always desire that government should do all this for them, and take every thing under its own immediate charge. This is unjust to government, and a gross neglect of the duties which every man owes, as a private citizen, to the state. There is an end of civil liberty when men will not exert themselves to fulfil the duties and responsibilities which it is the grand fundamental

principle of free institutions to cast on every member of the community. No man can fairly claim the protection of the state who shrinks from the manly discharge of his individual duty whenever circumstances call for the exercise of active energies, either to put the law in force, or to resist unconstitutional attempts.

The present government is, as the Author conscientiously believes, heartily in earnest in the wish to do what is really for the best in the work of sanatory improvement. But the task is no easy one. Clashing interests and private crotchets beset them on every side. It is important that government should feel that, in bringing forward a sound practical measure, in accordance with the spirit of the English constitution, they will meet with the hearty support of every thinking man; but that the offered measure must not be disfigured by theoretical proposals or by an unconstitutional machinery. The Common Law affords certain broad and simple, but most distinct and defined principles, which may be worked out by constitutional and simple means. It is especially important, in the present very unsatisfactory and complicated state of the statute law, and general ignorance of legal principles, that those principles and the machinery for working them out should be digested into a simple and plain form—in a single statute. This digest, declaratory of the common law as to all *principles*,—and always imperative, and thereby constant, at the same time that it is constitutional in the machinery devised,—must be of universal (not local or partial)