Chap. 10.
of Common Nusances.

Nusance, from the French Nuire to hurt, is a thing done to the annoiance of another. And Injuria sine damno is or an Injury wanting a proper Name, is in the Law of England termed a Nusance, in Latin Nocumentum. A Common Nusance is an offence against the publick, either by doing a thing which tends to the Annoyance of all the Kings liege people, or by Neglecting to do a thing which the Common good Requires and is termed a Common Nusance, because thereby every Man of or may be Equally Annoyed; to Distinguish it from a private Nusance, which is by some particular person and is or may be more grieved or injured than others.

Tho the Name of a Common Nusance is not so much used in Scotland, as it is in England, yet our Law takes Notice of and punishes the many offences, which may properly be called proper Nusances, such are 1st the offences against the Rules of the game of Hunting, Hawking or Fowling Act 20 Jac. 1. Parl. 7. pund. Act 13 Jac. 7. Parl. K. W. 1. 11. Act 20 Parl. 7. pund. Act 13 Jac. 7. Parl. K. W. 1. 11. Act for preserving the breed of Horses Act 11 Parl. 1. 11 Act 74 Parl. 10 J. 3 Act 111 Parl. 7. J. 6 Act 35 & 36 Parl. 14 & 15 Act 11 Parl. 16 Act 5 Parl. 18. J. 6. Act 33 Jac. 6 and 3 K. W. Act 2 Jac. 3 Parl. 2. A. 2 of the Marking Muir burn between the last of March and Michaelmas, when all the Summer Horn, which is punishable by the Law ment of Five pounds for the first Fault, 10 pounds for the second, and 20 pounds for the third, and a Year of Jail and bolies pro tuto Act 76 Parl. 10 J. 3 pund. Act 11 Parl. 5 J. 5 Act 84 Parl. 6 J. 6. And the Master Common Doth not Execute Servants or Cotters for committing Muir burn, bail both he and they are Liable Act 48 Parl. 4 J. 4. Albeit Ignorance and the Commands of a Master might seem to excuse a person ordinarie for the Breach of a Penal Statute. It should not alleviate the Transgressour of the Law of God in the least, or of a Law professed by the Law of Nature or Nations or the punishment of an Atrocious Crime. M. Lonzo observes on Act 4 B. 3d Thing Undertaking to the prejudice of Trade and the Making

Making or taking Subscriptions for that purpose, or the presuming to Act as Corporate bodies, without Legal Authority is deemed a Common Nusance 6 G. 1. cap. 18. & 18 & 19. 4. The offence of keeping a Common bawdy House is a publick Nusance, Code 3 Just. 205. Hawkins pl. Cr. lib. 1 & Chap. 74. & Chap. 75 & 6. such also is the keeping of Common Stages for Lodgers and all Common gaming houses 1 Mod. Rep. 76 Hawkins ibid. Not only because they are great Temptations to Idleness, but also because they are apt to draw together great Numbers of Disorderly persons, which cannot but be very inconvenient to the Neighbourhood. Such also is a play house having been originally Instituted with a laudable design of Recommending Virtue to the Imitation of the people, and Exposing Vice and Folly, or Not Nusance but their own Nature of, Yet a Common play house may become a Nusance by the accident, if it draw together such Numbers of coaches or persons, &c. as proves Generally prejudicial to the Inhabitants adjacent Hawkins pl. Cr. lib. 1 chap. 75 & 7. So if a Person erect a Mill upon a Navigable River, is a Common Nusance to Divert part of a Navigable River, whereby the Passage of it is Obstructed and made Unable to carry Vessels of the same burden as it could before Hawkins ibid. & 11. So throwing ashes, or firing of Guns, Squibs, Fire pots, Rockets or other fire Works in or in any public Street, Lane way, Road or passage is Reckoned a Common Nusance, 9 W. 3 cap. 7 & 1. 7. Also Harbouring of thieves or disorderly persons by Innkeepers, or an Innkeeper's Refusing to receive Travellers in his house, or taking Excessive prices, is a publick Nusance Hawkins ibid. chap. 78 & 1. 8. So to purpose what power to any Liege People, as by Digging a Ditch, or Making a Hedge over the Ward or Throwing Logs of timber in it, or by Locking any other Gate which will Render it less Commodious to the Kings people, are publick Nusances Hawkins ibid. chap. 76 & 8. 9. Also Keeping Dogs and certain other Animals Hawkins ibid. chap. 63 & 1. and by Common Nusance Hawkins ibid. chap. 63 & 1. and a Common Scold is Reckoned a Common Nusance Hawkins ibid. Chap. 75 & 5. 10. The Making of Candles in a Town because of the Noisomness of the Smell or the