

In regard to the subject of this controversy, it appears from the various legislative enactments in relation to it, that in the year 1766, the inhabitants of Baltimore, by their petition to the General Assembly, set forth that a large miry marsh, adjoining the town, was very prejudicial to the health of its inhabitants; and that the proprietors thereof, by their perverseness, or dilatoriness, had refused or neglected to remove the nuisance, which could only be done by changing the surface of the marsh into firm dry ground. Whereupon it was enacted, that *Thomas Harrison, &c.*, the owners of the said marsh, should, within one month after the end of that session of Assembly, give bond in a certain penalty, with surety to be approved by the commissioners therein named, within two years from the date, to remove the nuisance, 'by wharfing in all such marshy ground next the water,' &c.; and should also 'cover all such marshy ground with stones, gravel, sand, or dirt, so as to raise the same not less than two feet above the level of common flood tides.' And it was further declared, that the said marshy ground should be laid out by the said commissioners into streets, lanes, and alleys, and thenceforth be deemed a part of Baltimore town. And in case the said *Thomas Harrison* should neglect to give bond as required, then the said commissioners were to have the ground divided into lots, and sold upon condition, to 'wharf in and secure all such marshy ground next the water,' and also to have the same raised above tide as aforesaid. (e) After which *Thomas Harrison* gave bond as required, but not having been able to comply with its conditions within the time specified, he was allowed a further time; (f) which time was again extended by the Legislature. (g)

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(e) 1766, ch. 22. A common nuisance is a species of offence against the public, being either the *doing* of a thing to the annoyance of the people, or the *neglecting to do a thing* which the common good requires, and which certain persons are bound to do; as by *neglecting* to repair a highway, bridge, or public river which the party was bound to repair; *Jacob Law Dict. v. Nuisance*. But this act of Assembly declares the *natural* condition of a certain tract of land to be a nuisance, and obliges its owner to remove such nuisance by altering and improving its natural condition. But although it may be regarded as a principle of justice necessarily arising out of the very nature of a legal title to property, that no individual or set of individuals should be permitted to determine how the property of another should be managed, altered, or improved for their own especial benefit, or to promote the general salubrity of the country. Yet, as an exception to this rule, a law may be passed providing for cases in which swamps, bogs, or wet land should be drained by ditches and embankments on the land of each owner, for the general benefit; upon the same ground, that the owner of a lot in a city may be compelled to pave the street in front of his lot; *Arator by John T aylor of Caroline, page 172*.

(f) May, 1768, ch. 22.—(g) September, 1770, ch. 7.