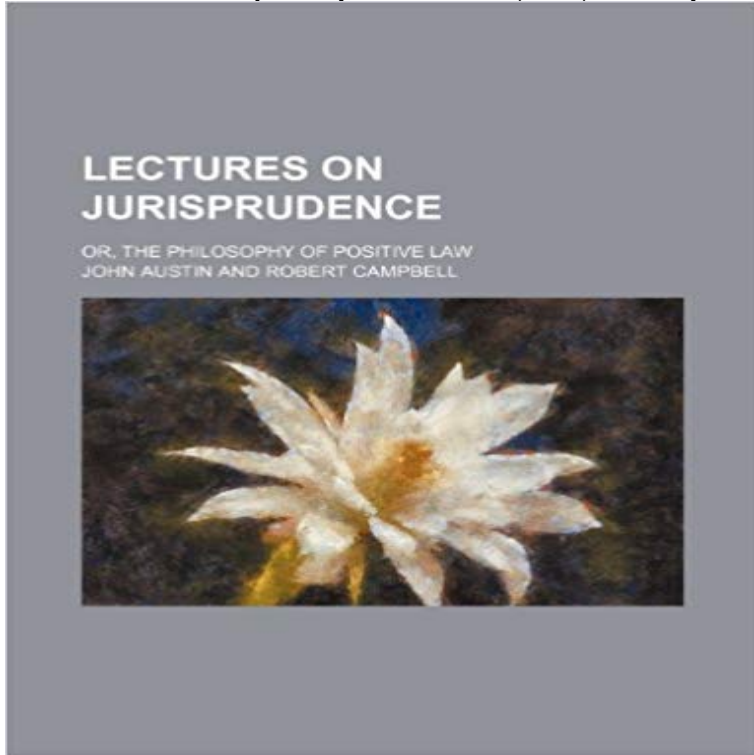


# Lectures on jurisprudence; or, The philosophy of positive law



This historic book may have numerous typos and missing text. Purchasers can download a free scanned copy of the original book (without typos) from the publisher. Not indexed. Not illustrated. 1880 edition. Excerpt: ...because the intention or negligence is manifest and indisputable. I make this remark because, owing to the arrangement adopted by the Roman institutional writers, one is liable to suppose that breaches of contract are not similar to other breaches of obligation, and are not even injuries at all; not being ranked with delicts or injuries, nor bearing the same name. In the arrangement of the Roman law, not only the primary obligations arising from contracts and quasi-contracts, but likewise the obligations arising from breaches of these primary obligations are said to be obligations arising ex contractu or quasi ex contractu. And in our own law we talk of actions ex contractu, and distinguish them from actions ex delicto; although the former are clearly just as much founded on injury as the latter. Unlawful intention or unlawful inadvertence is, therefore, of the essence of injury, and for this reason, that the sanction could not have operated upon the party as a motive Lect. to the fulfilment of the duty, unless at the moment im-XXV. mediately preceding the wrong he had been conscious that he was violating his duty, or unless he would have been, e?tence is conscious that he was violating his duty, if he had adverted i? or attended as he ought. If we examine the grounds of the various exemptions Grounds of from liability, we shall find that most (though not all) of nTfflthem are reducible to the principles which I have now y, mostly stated. We shall find (generally speaking) that the party theusnie is clear of liability, because he is clear of intention or in-PrmcPadvertence; or (what in effect comes to the same thing) because it i& presumed that he is clear of intention or

inadvertence. Thus: No one is liable...

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Jurisprudence: Or, The Philosophy of Positive Law. by John Austin, Robert Campbell. Publication date 1880. Publisher  
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Paged continuously. Contains Lectures on Jurisprudence or the Philosophy of Positive Law. Fifth Edition, Revised and  
Edited by Robert Campbell. Originally published: London: John Murray, Lectures on Jurisprudence: Or, The  
Philosophy of Positive Law. by John Austin, Robert Campbell. Publication date 1873. Publisher J. Murray. Lectures on  
Jurisprudence: Or, The Philosophy of Positive Law, Volume 1. Front Cover John Austin, Sarah Austin. J. Murray, 1873  
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