THE
Francis Haggrave.
DISSERTATION
OF
JOHN SELDEN,
ANNEXED TO
FLETA.
TRANSLATED, WITH NOTES:

By the EDITOR of BRITTON:
TRANSLATED and ILLUSTRATED.

LONDON:
Sold by J. WORRALL, and B. TOVEY, at the Dove;
in Bell-yard, near Lincoln's-inn.
MDCCLXXI.
TO THE RIGHT HONOURABLE

CHARLES LORD CAMDEN,
BARON OF CAMDEN PLACE,
IN THE COUNTY OF KENT;

THE STEADY SUPPORTER
OF ENGLISH LIBERTY;
UPON PRINCIPLES OF LAW;
THIS TRANSLATION OF SEDDEN,
WHO HIMSELF WAS SO EMINENT
AN ADVOCATE FOR THE
DUE MAINTENANCE OF THE LAWS
AND LIBERTIES OF THIS KINGDOM,
IN THE AGE HE LIVED;
IS MOST HUMBLY
DEDICATED BY
YOUR LORDSHIP'S
MOST DUTIFUL,
AND MOST OBLIGED
SERVANT,

ROBERT KELHAM.
PREFACE.

HAVING long regretted that so judicious a Treatise as this of the Great * Selden's, should lie, in a Manner, unnoticed, by being tacked to an Author, now so little read as Fleta; I have, in Hopes of bringing this little Piece more into Public View, attempted to Translate it.

The Subject, as will appear from the Contents of the Chapters prefixed to the Translation, is both very interesting and entertaining; and although this Dissertation is annexed to Fleta, there is only Part of the first, and last Chapters of it, which relates to that Author; and the fame, in * Grotius styled him, "The Honour of the English Nation."
all other Respects, might with equal propriety have been annexed to Glanvil, Bracton, Britton, or the Mirror.

I have added some Notes; and should this Translation be favourably received, the utmost of my Wishes will be answered.
THE CONTENTS.

CHAPTER I.

2. In what Class of Writers, the Author of Fleta is to be ranked. 3.
3. Of the Use and Authority of such Writers. 5.

CHAPTER II.

Sec. 1. Of the Manuscript Sum, wherein Gilbert de Thornton, Chief Justice under Edward the 1st, abridged Bracton. 9.
2. Of the various Names given to Bracton. 10.
4. The Title of the Thorntonian Sum, and the Lemmas of its Parts, many of which are imperfect. 17.

CHAPTER III.

Sec. 1. The manifest Footsteps in Thornton, in the Author of Fleta, and in Bracton, of the Use antiently made by the English Lawyers, as such, of the Books of the Civil Law. 25.
CONTENTS.

Sect. 2. The Reading and Sense of the above Authors, with regard to the *Lex Regia* contained in the Pandects, l. i. tit. De constitutionibus principum, even as we find it there, is very singular and extraordinary. p. 31.

3. The various Opinions of cotemporary Interpreters, concerning the aforesaid *Lex Regia*. 33.

4. What the true Sense is; and what that Law was. 44.

5. In what Sense our Lawyers in that Age thus applied the Civil Law, and particularly that *Lex Regia*. 48.

CHAPTER IV.

Sect. 1. WHAT Use was made of the Imperial Law in England, whilst the Romans governed here. p. 53.

2. The Imperial Law was manifestly made Use of both in the Roman Colonies brought over into England, and in the Civil Administration of Affairs at that Time in this Nation. 56.

3. *Papinian*, styled the Prince of antient Lawyers, was at the Helm of juridical Affairs in Britain, and determined Causes at York, and in other Parts of Britain, according to the Imperial Law: in which Station perhaps *Ulpian* and *Paulus* also were, as well as some others of the same Profession, their Cotemporaries. 63.

4. The Use of the aforesaid Imperial Law continued among us 360 Years, or thereabouts. 68.
CHAPTER V.

Sect. 1. In what Books that Imperial Law, which was made Use of in this nation in the Manner above shewn, during the aforesaid Interval of the Roman Government here, or about 60 Years, is to be found. p. 72.

2. Of the Theodosian Code, the true Year of its Publication restored against the Opinion both of Civilians and Chronologers, who have in that Point been hitherto mistaken. 76.

3. How the Imperial Law was in that Code altered, and at that Time appeared in a new Dress. 79.

4. Of the Use, to the Time of Justinian, of the Imperial Law renewed by the Barbarians in the West, in Italy, Spain and Gaul, after they had laid waste the Roman Empire; that is to say, of the Law chiefly contained in the Theodosian Code, and in the Apostolical or Alaric's Breviary. 83.

5. The constant Use of the Justinian Law, as such, in the East—No Use for many Ages after his Time made of it in the West, in Matters of public Government—The Theodosian Body with its Adjuncts was under the Name of Roman or Imperial, variously received, as well before as after the Reign of Justinian, down to the middle of the 12th Century, or thereabouts, in the Management of the public Affairs of some Western Nations. 89.

Sect.
CONTENTS.

Sect. 6. A Survey of the Use which Authors and the learned, during that Interval, made of the Theodosian Code, and what was annexed unto it. Likewise concerning that most famous Law of Constantine, contained in that Code, or generally published with it; by Virtue of which a prodigious and monstrous Jurisdiction was formerly attributed to Bishops, or to the Hieratical Order: tho' in reality, that Law was never a Part of the aforesaid Code, at the End of which it is found; but the same, tho' long before abrogated, was added unto it by some Forgerers,


CHAPTER VI.

Sect. 1. THO' the Clergy now and then made Use both of the Justinian and Theodosian Codes; the former Body of Laws, as such, was notwithstanding from the Reign of the Emperor Justinian, or about the Year of our Lord 560, till the Beginning of the 12th Century, or the Year of Christ 1130, or thereabouts, of no Force in the West, in Matters of public Government.

112.

2. The Revival under the Emperor Lotharius the 2d, about the Year of our Lord 1130, of the Justinian Code in the West. Of Irnerius, called the first Illuminator, the Light of the Law, the first Author of Glosses, and who gave Rife to the Azo's, Accursius's, and such other like Lawyers.

118.
CONTENTS.

Sect. 3. All the other Sciences, till then in a manner buried, began about the same Time, to be revived in the Western Parts of Christendom. p. 128.

4. Under what Restrictions the Use of the Justinian Law, thus revived in the West, was allowed of in France, Spain, Lusitania, Italy, Germany, and elsewhere. 131.

5. A Conjecture how it happened, that the Justinian Law, was, in the Reign of the Emperor Lotharius the 2d, or in the above-mentioned Age, so freely embraced by the Christian Princes, and the People in the West 135:

CHAPTER VII.

Sect. 1. OUR Nation made no Use in their public Government, from the End of the Roman Empire here, to the revival of the Justinian Law in the West; that is for 700 Years and upwards, either of the Theodosian or Justinian Body of Laws—The Imperial Laws were brought into England about the Year of our Lord 1140, being the same Time they began to be studied again in Bononia. 139.

2. In this Section 'tis proved, that the Theodosian Law or Code, was introduced about the Year 1140, into England. 143.

3. Concerning the Introduction, about the Year 1140, of the Justinian Body in England, and of its being then illustrated with valuable Interpretations, and reduced into a Compendium, by that most excellent Lawyer Master Roger Vacarius, who was the first
CONTENTS.

Sect. first most learned Professor of the Law among us. He was a Native of Lombardy, a Benedictin Monk, at first Prior, and afterwards seventh Abbot of Beck in Normandy. —King Stephen's Edict against him, and the Imperial Law considered. —The Abbey of Bec, was at that Time a renowned Seminary of Learning. p. 147.

4. Our Annals and Histories make no Mention of that Matter. What Notice is taken of this Roger Vacarius, the first Professor of the Justinian Law in our Nation, in the Writings of our Civilians and others. —Placentinus was a very great Enemy to him. Vacarius was, after the Death of Thomas Becket, elected to the Archiepiscopal See of Canterbury, and therein confirmed, but could by no Means be prevailed upon to consent to his Election. 157.

5. A Conjecture, or Surmise rather, concerning the Name of Vacarius in that Age. 171.

6. What engaged King Stephen to publish the aforesaid Edict, which was either speedily revoked, or came to nothing. The Monks were about the same Time, by a pontifical and synodical Interdict, prohibited to teach the Civil or Imperial Laws out of the Limits of their own Monasteries. 176.

7. Concerning the English Lawyers in that and the preceding Ages. 179.
CONTENTS.

CHAPTER VIII.
Sect. 1. WHAT USE our Ancestors made of the Justinian Body of Law, from King Stephen (in whose Time it was first brought hither) inclusive of the Reigns of Henry the 2d, Richard the 1st, and John, Kings of England. p. 186.

2. Some Footsteps of the aforesaid Use here, such as it was, under the Reigns of King Henry the 3d, and Edward the 1st, which last invited over Francis Accursius, to make public Lectures in England. 199.

3. Concerning the Reign of Edward the 2d, and some Laws out of the Pandects, the Places from whence they are taken referred to, as is usual, by our own Lawyers in the King's Courts. 211.

4. The Use of the Justinian or Imperial Law has continued in the pontifical Consistories, and in two of the King's Courts (one of which takes Cognizance of Military, the other of Marine Affairs) as well as in our Universities down to our own times, 218.

5. Whatever Use was formerly made of the aforesaid Imperial Law, either in the rest of the King's Courts, or in the Studies or Writings of our own Lawyers, as such, it, about the Beginning of the Reign of K. Edw. the 3d, wholly disappeared. 222.

CHAPTER IX.
Sect. 1. OUR Nation never admitted the Imperial Law into the Public, called the Civil Government, whatever Effect the
CONTENTS.

Sect. Use of that Law, such as it was, might have had among us, during the before-mentioned Interval. p. 228.

2. The Aversion this Nation at that Time shewed to the Use of the Imperial Law in Matters of public Government. 233.

3. The singular Esteem the English set on the Laws of their own Country, usually called the Common Law, as well as their resolute Adhesion unto it, in the Management of public Affairs; permitting at the same Time the Use of the Imperial Law, tho' not without restraining it within very narrow Bounds.

Of the Names Clerk, Clericature, and Clergie. p. 242.

CHAPTER X.

Sect. 1. Of the Age wherein the Author of Fleta flourished; that he neither wrote his Work in the Reign of Ed. the 2d, or 3d. p. 250.

2. The Commentary of Fleta was penned under Edward the 1st. 258.

3. Why the Author of the Commentary was called Fleta, 261.

4. Of the Provision mentioned in that Commentary to have been ordained by all the Christian Powers, concerning Alienation made by Kings. 266.
THE DISSERTATION
OF
John Selden Esq; annexed to Fleta.

CHAPTER I.
SECT. I.
Of the Edition.

The ancient Commentary on the Laws of England, called Fleta, so long, and so often wished for, by the learned, now at last appears in print. Some Booksellers, by the Help of a Librarian, whom they hired, plainly neither sufficiently skilful, or diligent, procured an Edition, such as it is, from an ancient Manuscript, then a valuable Part of the Cottonian Treasure: This Manuscript has been a long Time my Property, and still continues so; and, as far as I know, is the only one (a) extant, and not of a

(a) There is a Manuscript of Fleta in the Library belonging to the Society of Lincoln's-Inn,
much later Date than the Time of the Author, and some (b) Copies have heretofore been taken from it. I was not at all concerned in the Edition, for if I had, I should not have permitted so many Words of the antient Manuscript curtailed after the Manner of Law Writings, and (as Manilus said of the Writings of the old Formulis) notis levisibus pendentia verba, Words hanging as it were on flight Marks, to have been so punctually retained; nor would I, unless it had been in a Dress and Disposition more commodious to the Reader, have suffered it to be printed, or have let pass the trifling little Notes and insignificant Signs in the Margin, not to mention the vast Number of other Faults this Edition abounds with; much less would I so inadvertently have permitted the small French Tract, called, as is usual among the Lawyers, from its initial Words, Fét assavoir, and frequent in our old Manuscript Collections of the Law, to be, as if it had been a Part of it, tacked to the End of the Treatise. It is however true, that the said little Tract, was annexed to the antient Copy, from whence this Edition is made, and in a Character indeed, not altogether unlike: But between it and Fleta, there is no other Kind of Relation. It was no sooner printed, than its Editors earnestly requested me to prefix a Title to it; and

(b) Sir Symonds D’Ewes had one.
Sec. 2. annexed to Fleeta.

to say somewhat concerning the Book, its Author, and its Name, which I without Difficulty comply'd with, being then, by reason of a few Days slight Indisposition, quite at Leisure, and retired, though at the same Time unfit for, and incapable of Studies of a more extensive Scrutiny, and of an Application to more weighty Affairs.

S E C T. II.

In what Class of Writers, the Author of Fleeta is to be ranked.

The Author of this Book is hitherto altogether unknown, but is, whoever he was, to be reckoned among the following antient Writers, Ranulph de Glandwill, (at least if he wrote the Book going under his Name, which has Reference to the reign of King Henry the Second) a most excellent Personage, in the highest Degree of Favour with the aforesaid King, and at the Helm of public Affairs; Henry de Braeton, who was, in the latter Years of the Reign of King Henry the Third, a considerable Judge; the anonymous Author of the Royal Compendium of the same Braeton, with some of the subsequent Laws of Edward the First inserted, called Breton, or Britton, concerning whom, more by and by; Ralph de Hengham, Gilbert de Thornton, who, as well as the other, and this our Anonymous, (of which Matter more B 2 who
hereafter) wrote under Edward the first. Andrew Horn, in the Time of Edward the second, and some others of the same Kind, either preserved in the Archives of the Exchequer, or remaining neglected in the Libraries of the Curious. The Author of Fleta, is in my Opinion, chiefly to be ranked in the Class of the aforesaid Writers, his Work (as well as the Writings of the others, exhibiting, tho' with some Difference, according to the diversity of their respective Ages and judgements) a View of the Law of England, such as it antiently was under Edward the First. This Author, as well as the others are of great Service to our Countrymen, who in earnest apply themselves to the Study of the Law, and are desirous of knowing its Origin and Progress to the very Bottom, which task has, with Relation to the Imperial Law, been already performed by Papirius, Tubero, Julian, Proculus, Flavius, Aelius, Cato, Sabinus, Brutus, Alphenus, Labeo, Papinian, Neratius, Jabolenus, Celsus, Pomponius, Scævola, Catus, Paulus Ulpian, Callistratus, Modestimus, and by many such others, whose Writings would, had they been preserved entire, be in the highest Degree valuable. Fleta has indeed many Things, so very like what's contained in Bracton, and Thornton, that he frequently makes Use of their very Words; yet He at the same Time, especially in his Second Book, delivers many other Matters, which
which are neither to be found in them, or in any other Author we have perused.

S E C T. III.
Of the Use and Authority of such Writers.

These Kind of Authors are generally ranked by us in the Number of those, whose Learning is considered meerly as ornamental to Discourse, both in the Forensic, and Scholastic Disputations of our Law, and as carrying no Authority themselves, and this is countenanced by very considerable * Authors, tho' in my Opinion, with all due deference to such great Men, their Judgement, as to this point had it's rise and progress from a very great Error, which they, thro' inadvertency, fell into; For altho', on Account of the Antiquity of such Writers, and the very many intervening subsequent Alterations of the Law, they at Present are not in many Things of such Weight, as to be of themselves of sufficient Authority, with regard to Decisions, Judgments, and Consultations; they however contain numberless Things, which to this Day, either remain entire, or at least are not wholly abrogated; as particularly, in Matters, Feudal, Criminal, and Hereditary, in Contracts, Translation of Property, and in some other Cases, which daily occur: Or we are, by them more fully informed of the

* 35 Hen. 6.

Fitzherb. tit.
V. s. 157. Acone.

inde ali.
antient Customs, and Laws of our Ancestors preceding those Alterations: wherefore it certainly must be granted, that they plainly carry with them an Authority, on which the Interpretation of the Law may depend, as well as be allowed to be Ornamental in forensic, and scholastic Disputations. Can it be doubted, if we had not been to that Degree as we are, through the Injury of Time, deprived of the Law Writings of the antient Romans before mentioned, but that we should thence have drawn great Light and Authority, towards a right Understanding and Explanation of the Pandects (now filled only with some of their Fragments, which Tribonian, in modelling and settling the Law, adapted to his own Sense) as well as of the Codes, and Novells of the Emperor Justinian: Certainly we are too often, by that immense Loss, unhappily deprived of many great Helps, towards a thorough insight into the Roman Laws; as the no Way contemptible Specimens of the small remains which have been preserved of Caius, Ulpian, Paulus, and some other such like concerning this Matter, sufficiently shew us. Such antient Authors moreover, are, with regard to the more modern ones, and such as are of greatest Authority in the Study, and at the Bar, to be considered much in the same Light, as Sanctions, and Laws formerly made, are, with respect to those, by which the same have either been abrogated, altered, or renewed: even an abrogated Law,
Law itself, much more one altered or renewed, and the reason of abrogating, altering, and renewing it, being diligently weighed (for a Lawyer, without such a previous comprehensive survey, cannot form a thorough Judgement) plainly affords a very extensive Authority to the Law last made, and contributes towards the right understanding the Matter then in debate. Thus, in the Imperial Law, the Theodosian Code, and what is published with it, is, in many Things, of great Assistance to the Justinian Code. Thence four antient Compilations also of the Decretals by Antonius Augustinus, as well as the 5th, or Honorius Decretal, very lately published by Innocentius Cironius, are of Service to the Gregorian Part of the Body of the Pontifical Law. So both Burcardus, and Ivo, as well as others of the same Class, are of singular Use, particularly towards understanding the Compilation made by Gratian, and doubtless the Justinian Pandects themselves, as well as the other Codes, whence the Leonine Basilic was composed, which, whilst we are writing this, we for the first time enjoy from the Edition of that eminent Person, Carolus Annibal Fabrotus, likewise afforded extraordinary Help to those of the East, during the time they made Use of the aforesaid Basilic. The same may in like Manner be plainly said of numberless antient Laws of our own, and other Countries, which have been either wholly annulled, altered, or renewed.
Neither indeed can it be thought, that any one Writer at all of the Law should be found, whose single Authority, as to times subsequent to his own, must not decrease according to the various Reason and Use of the Customs and introduced Laws; but it is at the same time so far only diminished, as it clashes with the Customs and Laws thus superinduced; In which nevertheless, that Authority remains so firm, that the ancient Law, is thence chiefly to be learned, it's Use being, as it were, borrowed to interpret subsequent Laws, and is for that Reason altogether necessary and excellent; In short, both the Use and Authority of such antient Writers, is not unlike that of Epochs, from, or by which, the Deductions and Computations of Time, or of Motion, are made.
CHAPTER II.

SECT. I.

Of the Manuscript Sum, wherein Gilbert de Thornton, chief Justice under Edward the First, abridged Bracton.

As the Author of Fleta transcribes many Sentences and entire Periods, as well as the Matter itself, from Bracton and Thornton, just so Thornton, as Bracton's Epitomizer, copies him; and this Author being much such a Kind of Writer as Fleta, and in a great Measure, unknown, and unheard of, it may not be here improper, to add somewhat concerning him. This same Gilbert de Thornton, as every one, acquainted either with our Archives, or the Year Books of our Law, knows, was invested in the reign of King Edward the first with the supreme judiciatorial Power, or with that of Chief Justice. (a) Now Thornton, in the twentieth Year of the aforesaid King, with the utmost Diligence reduced Bracton into a Compendium, from whence we may form a Judgment, how great the Authority of Bracton, who was somewhat more antient than Fleta, was, in discussing Points of Law in the Time of Edward the first, whose juridical Annals

(a) C. J. of the King's Bench, 18 Ed. 1.
Annals have hitherto, and still continue to be considered in our Courts, as having Authority* and Weight in Matters of greatest Moment. I have by me a Manuscript of that Compendium, which from the Character it is wrote in, clearly appears to have been penned, during the Author's Life. I met with it in the Library, formerly the Burleian, and never heard of, or saw any other Copy. This Manuscript is distributed into eight Parts, though it is very imperfect. The Title of it is, Summa de Legibus et Conseatudinibus Anglice, a Magistro Henrico de Bryetona composita, tempore Regis Henrici filii Regis Johannis — The Sum of the Laws and Customs of England, composed in the Reign of King Henry, Son of King John, by Master Henry de Bryeton. There is afterwards added, Abridged by Thornton.

S E C T. II.

Of the various Names given to Brayton.

It is not to be wondered at, that the Person, commonly by us, as appears by his printed Works, called Brayton, should, his Name being often very variously wrote, be in the above Place filed Henry de Bryeton. And though we in the Beginning of his printed Works read, Ad Instructio nem saltem minorum ego Henricus de Brayton...
Sec. 2. annexed to Fleeta,

mum erexi, &c. — I Henry de Braeton have
ten my Mind towards the Instruction of
young Students, &c.—Some other Manu-
scripts have only, Ad, &c. Ego talis, &c.—
Towards, &c. I such a one, &c.—Others,
Ego talis H. animum, erexi, &c.— I such
a one H. have appli- ed myself, &c. And I
have by me, among other Manuscripts, a
very beautiful one of this Author, more an-
tient than the Beginning of the Reign of
Edward the first; yet somewhat of a later
Date than the Author’s Time, in which,
after a Recital of the Lemmas of the Chap-
ters, these Words follow — Explicitum Ca-
pita Britonis—Here end the Chapters of
Briton. So that he was called Braeton, and
Bryeton, and Britton, and Briton also:
And as is presently shewn, he is elsewhere
named Breton too: Whence I am of Op-
nion, that the Compendium, called Britton,
enlarged with some Subsequent Laws, com-
monly, through a manifest Error, attributed
to John Bretou, Bishop of Hereford, dead
many Years before the writing of it, was at
first called after its Author, who wrote it
in the Name, and by Command of King
Edward the first. It can’t be deny’d in-
deed from the Place in Braeton’s printed
Works, where * he treats of Error of the
name in the King’s Writs, but that his real
Sir-name appears to have been de Braeton.
Yet it is at the same Time, past all Doubt,
that he was antiently, not only called by
the rest of the Names we have mentioned,
but likewise by some others. And Manuscripts, in the Place relating to Error about Names, in which he brings his own as an Example, differ. One of my Manuscripts, penned in the Age immediately subsequent to the Author's Time, has, instead of what we find in his printed Works—*Item si erratum sit in syllaba, ut siquis alium nominet Henricum de *Brathon si nominare deberet eum de Brachiton. Item idem erit in litera, ut siquis erraverit sic nominando Henricum de Brochton, et nominare deberet eum Henricum de Braketon. Also if the Error be in a Syllable, as if any one should call another Henry de Brathon, where he ought to have called him de Brachiton. The same with Regard to a Letter, as if any one should thus err, naming one Henry de Brochton, where he ought to have said Henry de Braketon, and other Manuscripts in that Place greatly differ. It is moreover evident from the written Instrument of Richard de Schardeburgh, made to Thomas Bec, Arch-deacon of Dorchester, concerning a Book which the said Richard, about the beginning of the Reign of Edward the first, had through the Hands of this Thomas, borrowed of Robert Bishop of Bath, that it was at that Time usual to call him expressly by the Name of Henry de Breton, and his Book, BRETTON and Breton. The Title in the Archives * is,

*In Codice MS, Bullarum &c. apud Camerarios Seccarii fo. 375.
Sec. 2. annexed to Fleta.

Litera R. de Scardeburgh per quam recept ex mutuo de Magistro Thoma Bec quendam librum, qui vocatur Brettone.

The Letter of R. de Scardeburgh, by which it appears, that he borrowed of Master Thomas Bec, a certain Book, called, Brettone. The Instrument itself is as follows,

Universis præsentibus literas inspecturis R. de Scardeburgh Archidiaconus salutem in Domino sempiternam. Noxeritis me recepitisse et habuisse ex causa commodati librum quem Dominus Heuricus de Breton composuit, a venerabili patre domino R. dei gratia Batboniensis Episcopo per manum magistri Thoma Bec Archidiaconi Dorsetiae, quem eidem restituere teneor in festo Sancti Johannis Baptistæ, Anno Dom. MCLXXVIII. In cuius rei Testimonium præsentibus sigillum meum appensum, Datis Doveriae die Veneris post Purificationem Virginis gloriosæ, Anno MCLXXVII.

Richard de Scardeburgh, Archdeacon, wisheth to all who shall read these Presents eternal Salvation in the Lord. KNOW YE, that I have borrowed and received a Book composed by Master Henry de Breton, from the venerable Father Lord R. by the Grace of God Bishop of Bath, by the Hands of Master Thomas Bec Archdeacon of Dorset, to whom I oblige myself to restore the same on the Feast of St. John Baptist, in the Year of our Lord 1278. In Witness whereof my Seal is affixed to these Presents, dated at Dover the Friday after the Purification
cation of the glorious Virgin in the Year 1277.

This Instrument was made in the sixth Year of the Reign of Edward the first, and each of these Persons must have known Bracton himself when alive. But with regard to his Name there are besides express Testimonies in the Archives themselves, which * record that Bracton was a Judge. He is therein frequently called Henry de Bretton, and sometimes also de Bratton.

S E C T. III.

Of the French Compendium of the Law, called Britton.

It is the received Opinion indeed, that John Bretoun, or Bretun (by some * falsely called Beclon) Bishop of Hereford, coeval with our Henry, and learned in the Laws of England, was the Author of the Compendium which we call Britton. He is, in the London Edition likewise of Matthew a Monk of Westminster, (a) or Florilegus, printed in the Year 1670, and in the subsequent Edition of the same Author in Germany, expressly allowed to be the Author of the said Compendium. The Words in that Edition

(a) He ended his History at the Year 1307, and was styled Florilegus from his being a choice Collector of the Flowers of former Historians.
Edition are, Obit hoc anno Johannes Bre-toun episcopus Herefordensis qui admodum peritus in juribus anglicanis librum de eis conscripsit, qui vocatur le Breton. This Year (1275, or the third of Edward the first) died John Breton Bishop of Hereford, who being very skilful in the Laws of England, wrote a Book of them, called Le Bre-ton. And by this Name, without doubt, is meant either the Latin Work of Bracton, or that smaller French one, both of them, as is plain, being antiently called by the same Name. But it is evident, that whether the one, or other be intended, this must have been a Mistake of the Writer, whosoever he was, who rashly foisted it into the Works of Florilegus, because that Monk, as shall be presently shewn, was not the Author of it. No one, I am of Opinion, will admit this to have been said of the Latin Work of Bracton. And should it be affirmed that the French Work is there meant, neither can this be granted, since a Person, who died in the third Year of Edward the first (for this Bishop of Hereford, at that Time, departed this Life) could not insert in his Writings Acts of Parliament made more than ten Years after his decease. (a) And indeed I have a very antient Copy of that French Tract or Compendium, at the Close of

(a) See this accounted for by Mr. Wingate at the End of his Collection of Historical Passages, concerning the Author of the Book, called Britter.
of which is added—Ici finit le Breton que contient IIII lieures en les queux chезfu maniेre de plee est contenue—Here ends le Breton, containing four Books (that Treatise being so divided) in which every kind of Plea may be found—And I remember to have formerly somewhere read a Dystich in Rhyme, at the End of some such Copy, but don't thoroughly recollect all the Words of it; the first Verse however ended with Brato, for the Author's Name, and—et dixit talia nato, finished the second; which Circumstances also further plainly prove, that the Name of Henry de Breton, or Breton, in the Book, commonly called Britton and Breton, is to be understood, as of that of the primary Author of the Work, tho' enlarged with some Matters of a later Date than his Time. The same Book, called Britton, is likewise in our Law Annals,* evidently named Bracton. Thus we still properly say, the Justinian Code, notwithstanding his own Novells, as well as some Constitutions of the Emperor Frederick, were, many Ages after his Reign, added to it. In the same Manner we frequently call Xiphilinus Dio, Justin Trogus Pompeius, Florus Livy, that is, we point out the Epitomizers themselves by the Names of their Authors. And as to that Place in the Edition we have mentioned of Florilegus, tis not at all to be found, either in the first Edition printed in the Year 1567, or in the antiquit Copies of the same
Manuscripts preserved in the Libraries of Lambeth and Westminster. Wherefore we make no doubt, but that it was by some Sciolist or other inconsiderately inserted in it.

S E C T. IV.

The Title of the Thorntonean Sum and the Lemmas of its Parts, many of which are imperfect.

It is evident, that the Work of Thornton we have been speaking of, is an Abridgment of Henry de Braeton, for we chuse to retain that Name, though Thornton calls him Bryton. The whole Title follows,

Incipit Summa de legibus et Consuetudinibus Angliae a Magistro Henrico de Brytona composita tempore Henrici filii Regis Johannis, quam quidem Summam Dominus Gilbertus de Thornton, tunc Capitulis Justitiae Domini Regis in Anglia secundum Statuta et leges tunc usitatas, ad utilitatem posteriorum diligentius studi postmodum abbre-viavit sub compendio, anno regni Regis Edwardi filii regis Henrici vicefesso. Et ipse idem Dominus Gilbertus tempore illo Scien-tia, bonitate, et manugetudine floruit eleganter.
Here begins the Sum of the Laws and Customs of England, composed in the Reign of Henry Son of King John, by Master Henry de Bryeton, which Sum indeed, Master Henry de Thornton, then Chief Justice of our Lord the King in England, afterwards in the twentieth Year of the Reign of King Edward, Son of King Henry, with great Application made an Abridgment of, according to the Statutes and Laws then in Force, for the Use of Posterity. And this Master Gilbert, was at that Time eminently conspicuous for his Knowledge, Goodness, and Mildness.

The Sense is, that Thornton, while Lord Chief Justice, to wit under Edward the first, made this Compendium and Breviary, and that he did this according to the Statutes and Laws then in Force; that is, he gives us BraeTon's Works, so far as they may be of Help to Posterity towards rightly understanding the Laws and Statutes at that Time in Force, for he makes no mention of the intermediate Statutes themselves, made between the Time of BraeTon, and that of his own Writing, as for Example of Demand of Dower, *of Homicide by †Misfortune, of conditional Gifts, § and some others such like: He, as is usual with Epitomizers, passes by a great many Things, neither does he always follow BraeTon's Method, but sometimes another, and makes a different Distribution, as may more plainly be perceived from the eight Parts of this Work, disposed in the fol-
following Manner. We read after the Title — Et notandum est quod præsens Opus in octo partes dividitur.

And it must be observed, that the present Work is divided into eight Parts.

*Prima pars tractat de personis et earundem variis conditionibus, de rebvs et rerum divisionibus, de Donationibus et Confirmationibus.*

*Secunda, de actionibus et obligationibus, de praemis et judicium potestatibus, de Itinere iustitiarium et eorum capitulis.*

*Iertia, de criminibus et Homicidio, et de appellis et Ffcloniis.*

*Quarta, de Vetitis Namiis et Discefinis.*

*Quinta, de communia pasturæ, et ejusdem ammensuratione, de assisa mortis antecessoris, de Damnis et convictionibus.*

*Sexta, de brevi de Reō, de Summonitionibus et Efsioniis.*

*Septima, de Exceptionibus et regiis prohibitionibus, de Bastardia et gradibus successionis.*

*Octa, de homagiis et Relevis, hæreditatibus et Donationibus propter nuptias, et Dobibus mulieribus assignandis.*


The second of Actions, and Obligations, of Punishments, and the Power of Judges, of the Eyer of the Justices, and their Articles.
Here begins the Sum of the Laws and Customs of England, composed in the Reign of Henry Son of King John, by Master Henry de Bryeton, which Sum indeed, Master Henry de Thornton, then Chief Justice of our Lord the King in England, afterwards in the twentieth Year of the Reign of King Edward, Son of King Henry, with great Application made an Abridgment of, according to the Statutes and Laws then in Force, for the Use of Posterity. And this Master Gilbert, was at that Time eminently conspicuous for his Knowledge, Goodness, and Mildness.

The Sense is, that Thornton, while Lord Chief Justice, to wit under Edward the first, made this Compendium and Breviary, and that he did this according to the Statutes and Laws then in Force; that is, he gives us Bracton's Works, so far as they may be of Help to Posterity towards rightly understanding the Laws and Statutes at that Time in Force, for he makes no mention of the intermediate Statutes themselves, made between the Time of Bracton, and that of his own Writing, as for Example of Demand of Dower, of Homicide by Misfortune, of conditional Gifts, and some others such like: He, as is usual with Epitomizers, passes by a great many Things, neither does he always follow Bracton's Method, but sometimes another, and makes a different Distribution, as may more plainly be perceived from the eight Parts of this Work, disposed in the fol-
following Manner. We read after the Title — Et notandum est quod praebens Opus in octo partes dividitur.

And it must be observed, that the present Work is divided into eight Parts.

Prima pars tractat de personis et earundem variis conditionibus, de rebus et rerum divisionibus, de Donationibus et Confirmationibus.

Secunda, de actionibus et obligationibus, de panis et judicium potestate, de Itinere Justitiariorum et eorum capitulis.

Tertia, de criminibus et Homicidio, et de appellis et Feloniis.

Quarta, de Vetitis Namiis et Diffei-finis.

Quinta, de communia pasturae, et ejusdem amenituratione, de assist mortis antecessoris, de Damnis et convicitionibus.

Sexta, de brevi de Reolo, de Summonitionibus et Esstonis.

Septima, de Exceptionibus et regii prohibitionibus, de Bastardia et gradibus successonis.

Octava, de homagiis et Releviis, hereditatibus et Donationibus propter matreias, et Dotibus mulieribus assignandis.


The second of Actions, and Obligations, of Punishments, and the Power of Judges, of the Eyer of the Justices, and their Articles.

C 2 The
The third, of Crimes, and Homicide, and of Appeals, and Felonies.

The fourth, of Distresses refused to be delivered, and of Difficulties.

The fifth, of Common of Pasture, and Admeasurement thereof, of Affrize of Mort-dancestor, of Damages, and Attaints.

The sixth, of a Writ of Right, of Summons, and Esquires.

The seventh, of Exceptions, and the King's Prohibitions, of Bastardy, and Degrees of Succession.

The eighth, of Homages and Reliefs, Inheritances and Gifts on Account of Marriage, and Dowers to be assigned to Widows.

With Regard both to Method and Distribution, the Manuscripts of Bracton's Works greatly differ. There is a very beautiful and antient Copy of Bracton in the publick Library at Oxford, which, though it bears the Name of Henry de Bracton, is not at all distributed into Books, as the printed ones are, but is only so divided into Centuries, that after ten of them are distinguished by their respective Numbers, sixty-seven more short Chapters follow; so that the whole Work consists of one thousand and sixty-seven short Chapters. Other Manuscripts have a continued Series of Chapters to the End. The Manuscript of Thornton is moreover so imperfect, that whereas, each Lemma being added, the Chapters of the first Part make up fifty-eight, and those of the second nineteen, what should follow after
ter the forty-second Chapter of the first Part, and after the tenth of the second Part, somewhat of the ninth excepted, is entirely wanting. The same may be said of the third Part, consisting of thirty one Chapters, those between the eighth and the twentieth, not being contained in it. The fourth Part has twenty-six Chapters. The fifth had eighteen, of which, except a Part of the sixteenth, the two last only are extant. The sixth Part containing twenty-one Chapters is entire. The seventh had twenty-five Chapters, but fifteen of them only remain. The eighth Part is complete, and contains fourteen Chapters. He begins just as Bracton himself does, making use of the very same Words as are found in the printed Editions of that Author, except that he does not introduce the Name of Bracton, though he at the same Time, like Bracton, speaks in the first Person, and in the same Manner as the Manuscript —Ego talis animum induxi, &c. — His concluding Words also; and the whole last Chapter of the eighth Part, are almost the very same Words with which Bracton ends his Work. We have just Reason to believe this Abridgment by Thornton, to have been penned by the King's Command, or at least under his Favour; for we read in the Annals * of our Law, that this Edward (therein by Mistake of the Press, called the second) being desirous of having all the Laws and Customs of his Kingdom reduced into Writing, did,
for that Purpose, by the Assistance of the most eminent Lawyers in his Reign, compile, and that in his own Name, some other Books besides the celebrated one of Britton. What follows of Priest, Chief Justice in civil Causes, called Common Pleas, under King Henry the sixth, must plainly be understood of Britton.

At a Time when Debates arose in Court upon the Statute enacted in the third Year of Edward the first, concerning the Age of being out of Ward. (He says) Cest esstatut fuit fait en temps le Roy E. le 2, lequel roy fuit in purpose daver mise tout en certein, que il fist un liver deux ans apres cest esstatut fust et en que cest esstatut est reberse.

This Statute was made in the Time of Edward the 2d (which plainly should be read, E. le 1. for Edward the first) which King having resolved to reduce all the Laws to a Certainty, he to this End, two Years after the enacting the said Statute, published a Book wherein this Statute is recited.

This very Statute is set forth in Britton, § and it is generally believed, that this very Book is there meant. At the same Time I am of Opinion, that it is past all Dispute that it ought, instead of deux ans, two Years, to be read, douze ans twelve Years, for the the Statutes || also of the thirteenth Year of the same King, or those we usually call Westm. the second, are expressly mentioned in that Author; whence it is evident, as we have already observed, that it was wrote, not two, but
but at least ten Years, after the third of Edward the first. Wherefore it must, if we rely on Priot, have been penned about the fifteenth, and by no Means about the fifth Year, of Edward the first, as those, who are over confident in their mistaken Opinion grounded on the corrupt Reading of this Place, would have it. There is likewise in another Copy of the Law Annals, from whence that Quotation of Priot is taken, express Mention also of other Books having been wrote by Command of the same King. The Words are—† lequel roy suit ap purposé daver mise tout en certain et en escripture et commence de ce faire livrer de et par plus sages hommes del ley deins le realme f' fuges et autres. Il fis un livere deux ans prochein apres le fe- sance ce del eStatute, & c.—Which King (to wit, Edward the 1st, as the most correct Editions have it, for it is in others corruptly read Edward the second) being resolved to reduce the Laws to a Certainty, and into Writing, began to that Intent, with and by the Assistance of the greatest Sages of the Law within his Realm, as well Judges as others, to compile Books. He published a Book two Years (read twelve Years) next after making the said Statute. And there seems no Room to doubt but that Thornton’s was of this Number. The Words In Rege qui recte regit &c. are in the Beginning of it, just as in Bracton, and the first Word is depicted in a very large and elegant Space, and variegated with Gold and

C 4

Colours
Colours, within which the said King in this Manner seated on his Throne in his Royal Robes, addresses himself to the six (a) Judges standing before him, ornamented in their Law Robes, from thence intimating to us that his royal Mandate very nearly related to that Book, and that he himself was as it were the Author of it, as much at least, as Justinian was of the Tribonian Collections, and that it was then to be understood from the Throne, that he had in the aforesaid Book instructed the Judges and the rest of the Lawyers, in the Laws and Customs of England. Neither is Thornton a bare Epitomizer, but sometimes also an excellent Interpreter, and Expositor of Bracton, though he passeth by the Cases and Determinations of Law, many of which are mentioned by this Author, as well as almost all the Quotations of the Places, cited out § of the Books of the Imperial Law by Bracton, and which are basely handled by his Editors, but he has not omitted them all. We shall add a few things both concerning this Matter, and of the use, such Writers, as well as the Author of Pieta, have made of the Civil Law; And how likewise the same Law was formerly admitted, laid aside, restored, moderated, and limited within narrow Bounds, in this Part of our Island; and this we make

§ Bract. l. 2. de.
acquirend. re-
rum dom. c. 12.
1. 3. de Acqon.
bus c. 8. f. 3. et.
t. 9. f. 3. et
23. f. 5. et.

10 Antiently there were twelve Judges, six of the court of X. B. and six of the Com. Pleas. Pleas. Com-
mon Law. Eng. Ed. 15. 25.
CHAP. TER III.

SECT. I.

The manifest Footsteps in Thornton, in the Author of Fleta, and in Bracton, of the Use antiently made by the English Lawyers, as such, of the Books of the Civil Law.

THE Law, says Thornton, * gravem pænam insligit Judici corrupto per manera sordida—inflicts a great Penalty on a Judge corrupted by fordid Gifts — ut C. ad legem milit, (to the Manuscript has it;) but it ought to be read, C. ad legem Julian; which is concerning Bribery) t. omnes, ubi dicitur quod omnes Cognitores et Judices a pecuniiis manus abstineant ne alienum jur- gium patent suam prædam—In which it is said, that all Officers and Judges are to refrain from Bribery, lest they should look upon the Disputes of others as their Prey— and Bracton * has thus cited the same Law from

*Brac. lib. 3. de action. c. 3. f. 3. l. 45. b.
Colours, within which the said King in this Manner seated on his Throne in his Royal Robes, addresses himself to the six (a) Judges standing before him, ornamented in their Law Robes, from thence intimating to us that his royal Mandate very nearly related to that Book, and that he himself was as it were the Author of it, as much at least, as Justinian was of the Tribonian Collections, and that it was then to be understood from the Throne, that he had in the aforesaid Book instructed the Judges and the rest of the Lawyers, in the Laws and Customs of England. Neither is Thornton a bare Epitomizer, but sometimes also an excellent Interpreter, and Expounder of Bracton, though he passeth by the Cases and Determinations of Law, many of which are mentioned by this Author, as well as almost all the Quotations of the Places, cited out § of the Books of the Imperial Law by Bracton, and which are basely handled by his Editors, but he has not omitted them all. We shall add a few things both concerning this Matter, and of the use, such Writers, as well as the Author of Fleta, have made of the Civil Law; And how likewise the same Law was formerly admitted, laid aside, restored, moderated, and limited within narrow Bounds, in this Part of our Island; and this we make

annexed to Fleta.

no Doubt will be very acceptable to the learned.

CHAPTER III.

SECT. I.

The manifest Footsteps in Thornton, in the Author of Fleta, and in Bracton, of the Use antiently made by the English Lawyers, as such, of the Books of the Civil Law.

The Law, says Thornton, * gravem

\textit{panam infligii Judici corrupto per

minera sordida}\textemdash inflicts a great Penalty on a Judge corrupted by sordid Gifts \textemdash \textit{at C. ad legem milit,} (so the Manuscript has it;) but it ought to be read, \textit{C. ad legem Julian;} which is concerning Bribery) \textit{1. omnes, ubi
dicitur quod omnes Cognitores et Judices a
}

pecuniis manus absineant ne alienum jur-
gium putent suas prædam}\textemdash In which it is said, that all Officers and Judges are to refrain from Bribery, leaft they should look upon the Disputes of others as their Prey\textemdash \textit{* Brac. Lib. 3, 42

and Bracton * has thus cited the same Law from
from the *Justinian Code*, as is evident from the Manuscripts of his Works, notwithstanding that in the first Edition of the same author, printed in the last Century, as well as in the late Edition (both which pretend to have been published from Manuscripts with the utmost Care, (it is falsely read *ut C. ad legem vel repetet l. omnes*, instead of *ut C. ad legem *ful repetund l. omnes*, and instead of à *pecunias-à re cuivis*, is ridiculously substitut-
ed; as also a little after in the same Place, *ut C. s. l. ultima*, instead of *ut C. e. (for *codem titulo*) l. ultima*, by which Delin-
quents are obliged to a four-fold Restitu-
tion mentioned there by Theo. & Valentinian. And in both these Editions, we meet with many Faults, and those even of the grossest Nature, partly proceeding from the Ignor-
ance of the Librarians, partly from Care-
lessness. *Bracton* and *Thornton* in other Places apply the very Laws they have cited from the *Justinian* Body of the Civil Law, both of them having added, and as is usual with Civi-
lians, referred to the Places of that Law, which are by the Author of *Fleta*, wholly omitted, tho' this last, as well as they, expressly re-
cites the Laws themselves, and as being at that Time here in Force. For example, the Author of *Fleta* speaking of Gifts be-
tween Man and Wife, *The Words, says he,* 

*of the Law are these — *Si in nomine et sub-
antia nihil dixit a dote, &c.* He there ad-
ding what follows in that very Law which he
he hints at, made by Justinian himself, as both Thornton and Bracton also do. But each of these Authors, have in their Manuscripts likewise added, the very Place of the Law, which is omitted in Fleta thus, C. tit de Donationibus ante nuptias l. cum multæ, instead of which, it is in the printed Works of Bracton corruptly read, cum militie; and instead of what is in the very Law (as is truly set forth by Thornton and the Author of Fleta) Sancimus omnes licentiam habere, &c. Upon which Words, as being spoken in the Person of Justinian, every one must see the whole Force of the Law depends, it is very falsely printed, Scimus omnes licentiam habere, &c. But such Faults as these are very frequent in Bracton's printed Works, and are also often found even in some of the antient Manuscripts of the same author. And thus it appears, that that Justinian Sanction was understood by this Triumvirate, viz. Bracton, Thornton and Fleta, under the Name of a Law, and a Constitution, and an Inhibition: as if the Right of Donation between Man and Wife, had in England likewise thence derived its Force. And if in Donations between Man and Wife, any thing passeth otherwise than that Justinian Law prescribes, Bracton and Thornton affirm it to be an Abuse of the Constitution, and the Author of Fleta affirms it to be an Abuse of the Inhibition. It is likewise elsewhere read in Fleta, Dona- tiones etiam post feloniam perpetratam facia- per-
Selden's Dissertation. Ch. 3.

perfectae erunt et perpetuae, nisi donatores bustusinodi de felonii suis in vita sua convincantur—Donations also made after Commission of Felony shall be firm and lasting, unless the Donors are in their Life-time convicted of Felony, which is plainly agreeable to the Law now in force among us, as well as to the antient Law, but Fleet immediately adds—et ad hoc facit lex Imperatoria,—and this is confirmed by the imperial Law—post capitale crimen contractum donationes factae valent, nisi condemnatio fuerit subsecuta, which is 1. 15. D. tit. de Donationibus, taken from Marvian's Institutions.

And the fame is also cited by Bracton* thus, Et ad hoc facit Lex F. (instead of ff.) de Donationibus, post contractum, &c. And in another Place, Convenit Lex cum consuetudine Anglicana ff de donation. 1. post contractum, ubi dicitur quod post Contractum capitale crimen Donationes factae valent nisi Condemnatio subsecuta sit. And Bracton with good Grounds in the former Place, says,* Inuit ergo—the Law therefore hints, quod nisi fuerit subsecuta, valent Donationus, et si fuerit, quod non valent. — That unless there be a subsequent Conviction, the Donations are valid; but if there be, they are not—and thus both read that Law, as it is found in the more vulgar and common Editions of the Pandects, leaving out the express negative Word, met with in the more accurate Editions; for in the Florentine Editions, it runs thus—post Contractum capitale Crimen Donationes factae non valent.
ex Constitutione Divorum Severi et Antonini, nisi Condemnatio secuta sit—Donations made by any one after his having been guilty of a capital Crime are by the Constitution of the Emperor’s Severus and Antoninus, invalid, unless Conviction of the Donor follows—which extraordinary Form of Expression may seem to one, not thoroughly weighing it, to import that the Donations of the convicted were good, which had they not been convicted, would have been null, for this seems to be its literal Meaning: some therefore will have sit substituted in the Place of nisi; for then the Donation is made void by the Conviction only. The Doctors also are very much divided in their Opinions concerning this Law, and Bartholus speaking of it says—iba est valde notabilis lex et habet materiam quotidiam et legitur duobus modis, &c. — That Law is a very remarkable one, and furnisheth daily Matter, and is read two Ways, &c.—For my Part I make no doubt but that the sense was, the Donation after Conviction shall be of no Force; that this was the Meaning, also sufficiently appears from a kind of Version of it made by the Grecs—Τῇ διασημῷ περιληπτῷ καθευδησει ἔτη φαγότε μὴ τῇ ἑμετέρᾳ γενόμεναι δοσει ἐν ἱεραι—thus in the Basilici;* to wit, if the Donor be condemned to capital Punishment, the Donations made by him after Commision of the Crime are void. Whence I am also of Opinion, that the Grecs read in the very Digests, non valent—and as to the

* lib. 47, tit. 1.
the Word *nisi*, it is inserted in the very *Taulerian* (a) Edition of the *Florentines*, as well as in the subsequent ones, after a doubtful Manner; and certainly whoever is of Opinion that this *Archaism* ought to be retained here, * as it often is in other Places, must allow it to be right, to wit, if the Word *nisi* be here divided into *ni* and *si*, that is the *non si* of the Antients (for Grammarians,* grant *ni* may be used for *non*) the Sense will be plain, *non valent Donaciones*, which were the Words of the Imperial Constitution, to which *Marcian*, for Explanation’s Sake thus added, *ni si* Condemnatio secuta *sit*, that is, thus, *non, si* Condemnatio *sit secuta*: which is also conformable to the most received Law itself; but there’s no Occasion to resort to the above Archaism, nor would it I think afford us any satisfactory Help; either expunge *ni*, or substitute *non*. In the printed Editions likewise of *Braeton*, there is, (tho’ very injudiciously,) cited *l. 13. in honce fidei C. tit. de pactis*, and it is said to be thence proved, That Conditions not immediately, but after some interval, annexed to Donations, are no Part of them; but in the Manuscripts I make USe of, the Sense only of that Place, not the Passage itself is to be met with.

(c) This Edition of the *Florentine Pandects*, which is one of the Glories of the Prefs, was set out by *Frau Taurellius*, and printed at *Florence* in the Year 1553, under the Sanction of the Pope, the Emperor *Charles the 5th*, *Henry the 2d* King of *France*, *Edward the 6th*, King of *England*, and *Cosmi Medici* Duke of *Florence*.
S E C T. II.

The Reading and Sense of the above Authors, with regard to the Lex (a) regia contained in the Pandects l. i. tit. de constitutionibus principum, considered, even as we find it there, is very singular and extraordinary.

NOW of all the Instances which Bracton gives us out of the Pandects, tho' not expressly mentioned, of the foregoing Use made by our own Lawyers at that Time of the Imperial Law, that, concerning the Princely or Regal Power, is the most remarkable.* Nibil aliud potest Rex in teris, cum sit Dei Minister et Vicarius, nisi id solum quod de jure potest. Nec oblat quod dicitur, Quod Principi placet § legis habet vigorem, quia sequitur in fine legis, Cum legem Regia quae de Imperio ius lata est, id est, non quicquid de voluntate regis temere praefum tum est [sed animo condendi jura]. —The

(a) The Lex Regia, which Selden treats of in this and the subsequent Sections of this Chapter, was enacted, when the People of Rome submitted themselves wholly to the Government of one Person, viz. Julius Cæsar, after the Defeat of Pompey; or, to Augustus after the Death of Julius. By this it came to pass, that the Prince alone could not only make Laws, but was esteemed above the coercive Powers of them. Wood's Inst. Civ. Law, p. 95. See Dr. Taylor's Elements of the Civil Law, chap. Lex Regia, p. 236.
King says he, as being God’s Minifter and Vicegerent, has no right to do any thing on Earth, but what he can do according to Law, notwithstanding it’s being faid, that the Pleasure of the Prince has the Force of a Law, because at the End of the same Lex Regia, there follow these Words. Cum Lege Regia quae de Imperio ejus lata est, with the Lex Regia enacted concerning his Power, that is, not whatsoever is unwarrantably supposed to be the absolute Will of the King, [but what is resolved on with an Intent of enacting Laws] (these last Words, though they primarily relate to the Matter itself, yet they in this Place are redundant, and are neither in the Manuscripts of Bradton, which I make Ufe of, (a) nor in Thornton or Fleta) Sed quod Conflilio Magiftratum fuorum Rege autboritate, et habita super hoc deliberatione et traétatu reélre fuerit definitum, but what, with the Advice of his Counsel and after Deliberation and a thorough Debate concerning the Point, the King thereunto giving his royal Affent, shall have been lawfully enacted. To this Purpose, and almost in so many Syllables, Fleta, * quia sequitur cum Lege Regia quae de Imperio ejus lata est:—Thornton also having thus added the like Reason—quia sequitur in fine Legis quum lex regia (for so the Manuscript has

---

* Footnote: *Fle. 1. 1. c. 17. F. 7. fo. 17.*

---

(a) Nor are those Words in the Manuscript of Bradton, which is in the Library of the Society of Gray’s-Inn.
it instead of * lege iaque de imperio ejus lata est, et non quicquid de voluntate Regis temere præsumptum ci, &c. — From all these Passages two Things are indeed chiefly to be observed, and the last not without great Surprize. The first is, that in the Judgment of all these Authors, the Imperial Law was of such Weight in discussing that famous and most important Question relating to the King of England’s Prerogative, that whatever could be offered out of it, as being allowed of Authority or of common Custom, was looked upon to stand necessary in need of some Answer or Interpretation, and therefore to be of Force in Matters, on which the Hinges of the Government of the Common-Wealth or People of England turned. And the last is, that every one of these Authors, if I at all conceive their Meaning, both read and understood that Law, quoted out of the Pandects, quite otherwise, than I believe it was either read or understood by any of the Greek or Latin Writers. That Lex Regia is from Ulpian inferred both in the || Pandects and * Institutes—Quod Principi placuit (thus in both Places) legis habet vigorem; utpote; (but utpote is wanting in the Institutes) cum Lege regia, que de Imperio ejus lata est, populus ei et in eum omne suum imperium et potestatem conferat, as it is in the Florentine Edition; others having contulerit instead of conferat, and likewise some Copies of the D
Institutes have concedat, others conceissit, et concepsit, for conferat. Where cum (which in the most correct Edition of Cujacius, and in some others who freely follow that, is also read quum) is plainly to be taken for a causative Conjunction, subservient to the Verb conferat or contulerit, or to the Word concedat, conceissit, or concepsit. Justinian himself likewise elsewhere says, Lege antica quae Regia nuncupatur omne jus omnisque Potesitas populi Romani in Imperatoriam transita sunt potestatem—All the Right and Power of the Roman People is by the antient Law, which was called Regia, transferred to the Imperial Power—And Arcadius Charisius says, Regimenta Reipub. ad Imperatores perpetuo transita esse—The Government of the Republic is for ever transferred to the Emperors, hinting at this Lex Regia, which is in the Code also called Lex Imperii et augustum Privilegium—The Law of the Empire, and the Auguft Privilege. Pomponius also tells us—Constituto Principe, datum est ei jus, ut quod constituit, situm esse—A Prince once constituted, has a Right given him, by which whatever he decrees is rendered valid; but the Greeks for the most Part omitting that Reason of Ulpian speak here more fully ὅτε ἀφέσον τῷ βασιλέω νόμον ἐσθ, The King's Pleasure is a Law—that is, if he at that Time has the enacting of a Law under Contemplation, Thus elsewhere in the