Sec. 2. annexed to Fleeta.

(a) Basilics || and in Harmenopulus, § whence || Basiliscus ἡμερας * the Edicts or Decrees of Princes are with them a Part also of the Civil Law. But Theophilus a more antient Author in the Place where after these three, the People, the Plebeians, and the Senate, he makes the Roman Prince the fourth Author, concerned in enacting a Law, says, δι' τι, ἐν τοιαύτῃ; ἐν τῇ κυρία τῆς ἐκκλησίας πάσης τῆς ἡμέρας ἡμῶν. —and what is a Prince? A Prince is a Person, who receives from the People Power to govern. The aforesaid Writer, as well as Ulpian, thus understood the Lex Regia. And the Scholia there on this Place Basiliæus Νόμων, a lawful Prince, to wit, one to whom such a Power is granted. Whence in the Epitome of Leo, and Constantine, * an Emperor is called ἡ ἑπισκοπὴ ἐπισκοπία, a lawful Prefecture. But to me it appears plain, that each of our before mentioned Triumvirates, so read this Place, that they did not doubt but that the whole Sentence or Sense ran thus,

(c) The Basilica, or Ἰος Graecæ-Romanæ, compos’d in the 9th and 10th Centuries, in Emulation of Justinian by Basiliscus Macedo, Imp. and his Sons, Leo & Constantine.

It was a Collection of Law for the Use of the Eastern Empire, compiled out of the several Greek Versions of Justinian’s Corpus and other books of Law, which prevailed in those Parts: was published in sixteen Books by Annius, Faurotus, Gr. Lat.

These Books were never received in the West, and are consequently of no Authority there, but however have their Use and Value in comparing and explaining. Tyl. Elem. of the civil Law, p. 23. See also Aylt’s Preliminary Discourse, p. 33. &c. Bev. Hill. Civ. Law, p. 103.
Quod Principi placet Legis habet vigorem, cum Lege Regia qua de Imperio ejus lata est. And both Bracton and Thornton, expressly give Room enough to understand, that the above Law ended with those Words; so that they, as well as the Author of Fleta, take cum to be a Preposition, not a Conjunction, and that the Sense is, that the King’s Pleasure has indeed so far the Force of a Law, as his Will legally comports with, and may be weighed with the Lex Regia, enacted concerning his Power or Government, and that it should be no further of Force, than as it is conformable to the said Law, neither is any Thing otherwise to be determined concerning that power of the Royal Will, but what is particularly allowed of by all the Conditions and Restrictions of that Lex Regia, without which the supreme Power was not conferred, as appears by what is there immediately added concerning our peculiar Prerogative of enacting Laws in a parliamentary Manner, as well as of distributing Justice according to Law; neither do these Authors seem at all in that Place to have acknowledged the Fact concerning — Imperio et potestati omni a populo concessa the whole Authority and Power having been granted by the People by that Law, any more than if no such Matter had been mentioned in their Manuscripts. It is certainly evident, that the learned here, as well as
in other Nations, had in Bracton's Time, and much more afterwards, compleat Copies of the Digest, and that they were, as well as other Books, usually transcribed; this, had we no other Proof (which however we do not want as is hereafter shewn) is very plain from the Examples Bracton brings of the Forms of Contracts, where he speaks of transcribing || the Code, and Digest, as of a Matter exceedingly common among us. It is hence the more surprizing how it should have happened, that not only this Author, so eminent for his Knowledge of the Law, and who was, if we may give credit to the Biographers * of the English Authors, Professor of both Laws at Oxford; but that Thornton also, otherwise ex-
streamly well skilled in the Law, as well as the Author of Fleta, should have, in their Explanation of that most famous Place in the Imperial Law, without the least scruple allowed of a Reading and Sense so different and so remote from that of all other Interpreters; though they at the same Time, with regard to the Matter itself which they treat of, as well as with respect to the Constitution of the English Nation, without taking any Notice of the Words of Ulpian or Justinian, intermix what is very conformable to Truth, and what is generally received, being understood as it ought to be, of Parliaments; concerning which see also Bracton in his Proemium. I have
moreover by me an antient Manuscript Commentary on the Book called Britton (tho' in an old Account prefixed of the Tracts of the Volume in which it is contained, it is as was mentioned in the foregoing Chapter, called Bracton of the Laws of England.) In the Beginning of which Manuscript, the very same Sense is given to the Words, Quod Principi placuit, &c. as Bracton under-understands them in.

S E C T. III.

The various Opinions of the cotemp-orary Interpreters, concerning the aforefaid Lex Regia.

NOW it ought, with regard to the Reading and Sense we find in other Authors of this most celebrated Lex Regia contained in the Body of the Imperial Laws, to be observed; that the same Law, as quoted above out of Justinian, is in some Copies of the Digests as antient and even of a Date prior to Bracton, differently read, and this too approved of by some Interpreters. Odofredus || Cotemporary with Bracton read in his Manuscripts — Utpote cum Lex Regia lata est, populus ei et in eum Imperium et Potestatem conferret. Inasmuch as when the Lex Regia was enacted, the People gave unto him and conferred upon him the
the Government and Power. So that the Words omne suum were omitted, and Odofredus elsewhere says, in litera est, concessit et hoc est bona litera. But the Sense of that Law, according to the Interpreters cotemporary with Bracton, and those who preceded him after the revival of the Imperial Law in the West was various, for even at that Time there were Persons of Opinion, that by that Law all Kind of Authority and Power was by the Roman People so entirely transferred to the Prince, as to maintain, that the People were thereby wholly stripped and deprived of all Manner of Power and Government. Others, § Hofstiensis tells us, say Quod nec populus nec Senatus potest Hodie condere legem generalem, sed tantum Princeps, quod verius credo——That neither the People or Senate can at this Day make a general Law, but the Prince alone, which Opinion says the aforesaid Author I believe to be the truest. Accursius § writes to the same Purpoase. And Martinus, if I am not mistaken, was of that Mind. And we shall by and by speak more indeed concerning this Opinion. Others thence indeed concluded, that the Power and Government was conferred on the Prince to enact whatever Laws he pleased, but nevertheless in such a Manner, that the Power of the People was not at all diminished by that Concession, and that the Authority, not only of the antient Plebiscita and Senatus Consulta, but even that of the D 4
subsequent ones, was as heretofore, to remain entire; to wit (which may justly be wondered at) that as to this Matter, the Prince, the People, Senate and Plebeians, should alike share an equal Power. This is plain enough from § 2, Azo, Accursius, Hoftiensis † and Odoferdus, || who were either somewhat older, or contemporary with Bracton. And this last Opinion took its rise partly from those Authors in this Place mistaking the Lex Regia for the Lex Hortensia; partly also, and perhaps chiefly, from this, that in the aforesaid Age, some Professors and learned in this Law, which had not long before been revived in the West, were under Apprehensions, lest, if in Consequence of that Law they had attributed to their Princes all the Power which those who favoured the first Opinion allowed them, they might have too much incurred the Displeasure of the People and Citizens, enjoying every where their Liberty and antient Customs, widely different from such a Power; and that they should not in this Case with sufficient Prudence have taken Care of the Rights of their own Profession, lately revived amongst them. The Controversy too which had in those former Ages been carried on between the Martinians (a) and Bulgarians † concerning

(a) Called so from Martin of Cremona, and Bulgarus, his Opposer, who studied in the University of Bononia, and lived in the fifteenth Century, in the Reign of Frederick Barbarossa.
ing the Power of the Prince, grounded on this Law, is very well known. Now four hundred and twenty-two Years after the Foundation of Rome, or three hundred and thirty Years before Christ, a Law was during the Dictatorship of Q. Hortensius, enacted, that *Ut cojure quod plebs statuisit, omnes Quirites tenorentur,* that the whole Roman People should be bound by whatever Law the Commons had made. Hence according to Pompontius, it came to pass, that *species constituentes interesserit,* potestas autem eadem esset—although there was in the Manner of constituting the Laws some difference, yet the obliging Power of them, whether they were Laws which had been made by the antient Kings, Senate, or otherwise, and by the Plebeians, was always the same. And Justinian tells us, that hence Plebiscita non minus valere quam leges cepisse: The Plebiscita began to be of equal Force with the (a) Laws; though we read in Livy that about one hundred and twenty Years before the Lex Hortensia, L. Valerius and M. Horatius, (b) being Consuls, Omnium

(a) i.e. Those which the People of Rome established upon the Recommendation or Request of Senatorius a Magistrate. A Plebiscite was that which the Common People enacted at the Request of the Tribune or other Plebian Magistrate. Wood's Civil Law. p. 94.

(b) The Commonalty of Rome assembled at Mount Aventine, having abolished the arbitrary and tyrannical Government of the Decemviri, Lucius Valerius and Marcus Horatius.
nium primum, quum vcluti in controverso
jure esset, tenerentur ne patres plebiscitis, le-
gem, centuriatis comitem, tulisse, ut quod tri-
butim plebes jussemisset, populum teneret—
When it was as it were a controverted Point
whether the Fathers were bound by the
Ordinances of the People, a Law was made
in the Centuriata Comitia, that whatever
had been ordained by the Plebeians in the
Tributa Comitia, should oblige the whole
Roman People. — But the Reason brought
here by Accursius, Odofredus, and others out
of the Lex Hortensia, is indeed extraordi-
nary. Here follow Accursius's Words—
Regia, sic licet lata ab Hortensio mirabili ora-
tore, ut supra de Origine Juris l. 2 §. deinde
cum esset. Sed de populo et plebe ibi dicit. Dic
ergo heic Regia, id est, Regali.—By the Lex
Regia

Horatius, were created Consuls; and at this time (it be-
in some Measure a Moot-point in Law, whether the
Fathers were bound by the Ordinances of the People) the
first of these Persons made a Law, ordaining, whatever
the Commonwealth commanded in the Tribes, should oblige
the whole Roman People. This Law, called the Horatian
* Law, was afterwards confirmed by the Dictator Quint.
Publius; and from him styled the Publilian Law. But it
being revived by the Dictator Quinct Hortensius, when
the Commons, by a third Mutiny, retired to Mount
Janiculum, it was from him term'd the Hortensian Law.

See Ayliff's Preliminary Discourse on the rise of the
Civil Law, p. 12.—Bever's History of the Civil Law,
c. 6. p. 13.

* This Law is by many Authors called Lex Valeria
et Horatia from both the Consuls.

Antiq. p. 152.
Regia, to wit, that made by that wonderful Orator Hortensius, as above of the Origin of the Law, 1. 2. § deinde cum esset. But he there speaks of the People and Plebeians. Say therefore here Regia, that is, Regal. He acknowledges, as indeed he was obliged to do, that in the Lex Hortensia, there is no Mention made of any other Power than that of the People and Plebeians, or of the Senators and Plebeians. How then comes it to pass, that any Thing is there prescribed concerning the Lex Regia, Dic ergo regali — Say therefore, says he, the Regal, where his Meaning, if I understand it, is, that the Lex Hortensia made with respect to the regal Authority, that is the Right of ruling or governing, having granted an equal Power both to the Plebeians and Senate, (of which two Parts or Orders the entire Body of the Roman People then consisted) is to be in like Manner thus understood, that it must, as well for the same Reason, as from the Sense of that Law, be admitted that the Prince once joined to the People, is, he being considered as a third Part of the Government, of course invested with an equal Power; for I can see no other Reason, why these antient Authors should have given the Lex Hortensia any Place at all here. And it was on this Account, that those who were of this Opinion, interpreted what Justinian mentions with regard to the singular Force of the Plebiscita and Senatus Consulta, as if from his Words
Words, the very fame Power and Authority, which the free Common-wealth formerly enjoyed in enacting of Laws, still subsisted with the Roman Senate and People. They likewise debated, whether the Power thus granted by the People could be lawfully revoked, as being an Authority with which the delegating Power † had invested the delegated.

SECT. IV.

Which is that true Lex Regia, and what its Nature is.

NOTHING is more evident than that the first Opinion, to wit, That the People, were by the Lex Regia manifestly stripped of all Authority and Power in enacting Laws; is true, and this is clear, as well from Justinian himself, as from the most eminent antient and modern Interpreters. The very Words before cited out of Justinian concerning that Law sufficiently prove this; to which, what follows of Constantine, ‡ may be added—inter aequitatem jusque interpositam interpretationem nobis solis et oportet et licet inspicere—It belongs to and is lawful only for us, to interpret between Equity and Law; the Greeks read † μόνον τον θεμέλιο του βασιλείου, Le the Prince alone determine what is Law, and,
and that also of Justinian § to Demosthenes Praefectus Pratorio—Si imperialis majestas causam unconditionaliter examinaret et partibus cominus constitutis sententiam deserit, omnes omnis Judices qui sub nostro Imperio sunt, seiant banc esse legem, non soium illi cause pro qua producta est sed omnibus timilibus. Quid enim majus, quid iam wie, &c. — If the Imperial Majesty should conditionally examine a Cause, and pronounce Sentence, the Parties concerned being present, Let all the Judges under our Jurisdiction know, that this is a Law, not only with Respect to that cause for which it was made, but also in all like Cases; for what is greater, what more sacred, &c. A most antient French Manuscript Translation of the Words of the Lex Regia out of Ulpian, may be here, as to this Point, produced to corroborate the Opinion of some of the antient Interpreters above cited—Ce que plest au Prince a force de loy, pur ce que li peuples li ottroia en la Loy royai que fu fait de l'empire tout le commandement et toute le poeile que il avoiert et le mistrent sus lui et en lui. The Princes Pleasure has the Force of a Law, because the People by the Lex Regia made concerning Government, granted unto him all their Authority and Power, and placed it on, and in him. How the more common modern Interpreters mentioned by us understand that Place, is obvious to every one. The most learned and correct of them acknowledge, that the Lex Hortensia, which the Antients in this Place, without any Grounds so wrested, does
not at all, with regard to this Matter, concern, nor even so much as point at the *Lex Regia*; in some of which Authors* also, *Lege Remnia*; instead of *Regia*, is inserted. Now it is plain to every one that a Law may for two Reasons be called *Regia*, to wit, either on Account of its being enacted by the King, or concerning him, or the regal Power. There are in *Dyonisius Halicarnassæus* † a great many *Regal* Laws of the Romans, which are also carefully set forth by *Pulvius Urhimus*, § There is likewise Mention made in the Code || of a *Lex Regia*, enacted by some antient King, concerning the interment of pregnant Women; but it is plain, that it is in this Place called *Lex Regia* in the last Sense, and is justly taken for that Law (for other Opinions are to be quite rejected) by which the Roman People transferred all their Authority and power to *Octavius Augustus Cæsar*, and his Successors without the least reserve to themselves of their antient Power; concerning which Matter, *Dio Cassius* ‡ indeed in his History, of *Augustus*, treats pretty fully, as well as *Suetonius*,* who in his Account of the same Emperor says, that *Tribunitiam potestate perpetuo receptum* &c. *receptit et Morum Legumque regimen aequque perpetuum.* He had the perpetual tribunitial Power, as well as the perpetual Government of the Customs and Laws conferred on him, &c. And there is moreover a Table of Brass in the Church of St. John of Lateran at Rome, or from thence removed to the Capitol, in
which a fragment is to be seen of the very Lex Regia itself, inscribed to the Emperor Vespasian, by which it is easy, with respect to this Point, to find out the Sense of this Lex Regia as set forth by Ulpian. We likewise, among other Heads concerning the supreme and sole Government confirmed, according to that Author, by the People to Vespasian as hereditary, to wit, to be enjoyed by him after the same manner as Augustus, Tiberius, and Claudius, possest them, in the same Writer read what follows, Utique qua ante hanc legem rogatam acta, gesta, decreta imperata ab Imperatore Caeare Vespasiano Augusto, justi Mandatoe ejus à quoque sunt, ea verinde iusta rataque sint ac ji populi plebisue jussi acta essent—Moreover, whatever Acts, Transactions, Decrees, passd by the Emperor Caesar Vespasian Augustus, or by any one, by Virtue of his Command or Mandate, before the enacting this Law, were to be as just and firm, as if they had been enacted by Order of the People or Plebeians. The entire fragment (a) is set forth in Janus Gruterus, Fulvius Ursinus, Antonius Augustinus, Franciscus Hotomannus, Barnabas Brissonius, and others. And many of the later Interpreters agree, that this lex Regia contained in Ulpian or Justinian must be understood in the foregoing Sense. Besides those who have wrote whole Volumes, either on the Title of this Law

(a) The Fragment of this Law is likewise published in Dr. Taylor's Elements of the Civil Law. See Chap. Lex Regia p. 256.
Law in the Digest and Institutes, or on Empire and Jurisdiction, consult Augustinus and Hotomannus in the Places before referred to, As also Joannes Corafius, Ludovicus Charondas, Petrus Tholosanus, Franciscus Connamus, but above all Franciscus de Amaya in his Observations, wherein he treats largely of this Matter; but these by the by.

S E C T. V.

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

It is moreover plain from the above Places cited by our most eminent Lawyers out of the Imperial Law, to wit, the Author of Ileta, Bracion and Thornton, (the two last having been at the Helm of Justice) thus by them quoted, expressly pointed at and produced as Proofs and Arguments with Regard to the Matter they handled, and which they offered, either as carrying Authority with them, or as having at least the Force of a weighty Reason; that some Kind of Use, not very difficult to be discovered, of the Imperial Law and of the Books containing it, prevailed among our Ancestors in that Age in Decisions that were to be determined by the Law of England. Not that they thought this Realm subject to the Roman
Roman Emperors, or to the Imperial Law; or that our Policy any way depended upon it, or that the Law of England, which had long before been established either in writing, or by Custom, could receive any Alteration from it, they themselves in several Places informing us that our own Law, where it widely differs from, and even is plainly repugnant to the Imperial Law, is to be followed; but all they meant was, that where an express Rule was wanting in our own Law, Recourse might then be had to the Rule of the Civil Law, as far as grounded on Reason: And when both Laws were conformable to each other, that then the Matter in debate was in some Measure confirmed or explained by the Words of the Imperial Law; which Practice we are certain has been in former Times, as well as now, followed by other Western Nations. And doubtless that Passage out of Ulpian, concerning the Lex Regia, could not merely from its own Authority have any Share in deciding that famous Question among us, relating to the Royal Perogative; since, with regard to our public Government, the Imperial Law could of itself have no Manner of Force; neither indeed is that Place out of Ulpian, cited in any other Sense by our own Authors here named, than as they, however mistaken, considered the same as we have shewn, either as conformable, or at least not opposite to, but easily suited to such Customs of our own Nation, as were always
always in Use among us. But the true Sense of that Passage as above set forth, considering it as a Part of the Imperial Law, is quite opposite, not only to the Constitution of the English Government, but likewise to that of most of the Christian Republicks throughout Europe; that Law having manifestly transferred all Kind of Power and Authority to the Roman Prince, that is to say, all that could be conferred on a Prince, to enable him to govern a free People without Tyranny. Cujacius † in a few Words explains the Matter itself — Augusto illo privilegio eadem est Pote Has principis que populi fuit — the (Roman) Prince has by that august Privilege the same Power the People enjoyed. — Some other very learned Men speak to the same Purpose. Neither indeed had the Plebeians or Senators any other Power after the Lex Regia was enacted or put in Practice, than what the Emperors themselves were pleased to grant them. Many Writers * likewise endeavouring to adapt the imperial Law to that of their own Country, labour to make it appear, that the Translation, or rather according to them, the Communication of Empire, was by various Compaets and Conditions so moderated, that they, as far as I can see, make no great Difficulty widely to dissent from Ulpian and Justinian’s Meaning, at the same Time that they profess themselves their Interpreters, that is, in attributing another Power to the antient Caesars, every Way un-

---

suitable to them, (their Manner of governing not being to be looked upon as a Rule for that of other Princes) and much inferior to that which Roman Antiquity acknowledges their Emperors to have been invested with. Neither are those Authors more in the Right, † who are of Opinion that several Leges Regiae, and those various too, were enacted by different Roman Princes; and that there was, as was before observed, more than one, either enacted concerning this Matter, or held as such. And they too inconsiderately censure that Opinion of all Empires having been, as has been said, conferred, as far as transferrable, on the Caesars, always as adulatory; for certainly, whoever should offer to a Prince any thing concerning the unbounded Authority of the antient Roman Monarchs, would be accounted every whit as great a Flatterer, as a Person who should lay before the Grand, Seignior or other such mighty Potentate, the confined Power of the old Kings of Sparta, or who should represent to him the Forms of other Governments, which are by various Methods curbed and restrained within narrow Limits, would deserve to be looked up-on as offering an Inflct to such a Power, or as aiming at lessening the Majesty or Dignity of such Princes. Neither is there in the German, which is the present Roman Empire, any Succession with regard either to the Laws of Justinian considered as such

Vil. 1. 1. c. 16. 
Cap. l. 2.
or to those of the antient Romans. Nor have the Chapters of the same Law concerning the Power of Princes any other Force at all there, much lesse elsewhere, than what is granted it by more modern Laws and Customs, and these very considerably varying; that is, as it is differently interwoven with the Imperial Capitulation, or the regal Law of the German Empire. Consult with regard to the aforesaid Capitulation and Lex Regia, (a) Benedictus Carpsovinus's Treatise, published some Years since on this Subject, and on the like, among other Nations. We have judged it not improper to add in this Place, some Account with respect to the Use, such as it was, of the Imperial Law, formerly admitted in this Nation by our learned Lawyers considered in that Capacity; likewise when, how, as well as whence, such a Practice commenced, increased, and arrived to its Height, in some Measure, as is hereafter shewn, both in the Courts, Studies, and Writings; and finally, when its Use was quite laid aside; and after what Manner in the Ages, much earlier than the aforesaid Commencement, the same Law was of some, or no Force, among us. For the curious may perhaps judge the handling these Points to be of some Use, and not improper in this Place.

(a) Digby's Elements of the Civil Law. Chap. Lex Regia, p. 236.
CHAPTER IV.

SECT. I.

What Use was made of the Imperial Law in England, whilst the Romans governed here.

The Use of the Imperial Law in England is of three Kinds.

The first regarded the supreme, and as it were the universal Government among us.

The second was adscititious only or mixed, suited to, and often from its Reasonableness affording, both in the Studies and Courts, Assistance, not only to interpret the English Civil and Pontifical Law; but also, where an express Rule was wanting in our own Law, or when the Imperial was, as it often happened, entirely conformable to our Law, it was then, as administering Authority, brought in merely by the Consent or Admission of those who made Use of it in our own Nation, and not by Virtue of any Power in the Enactors of the Imperial Law.
The third was confined to some Consistories and particular Causes only, to wit, to Military, Marine, and Testamentary, and therefore so limited, that that Law was not usually allowed of beyond those Bounds. Just so the Romans received the naval Laws of the Rhodians, and we, and other maritime Nations, the (a) Oleronian. We shall here chiefly treat of the first and second kind of Use, the third being by every one thoroughly known.

The first kind of Use was only observed among us during the Roman Government here. Its Commencement in this Nation must be dated from the Reign of the Emperor Claudius; for the Monk (b) of Malmsbury,† and those who copy him and other such Writers, who without any Foundation assert that, Britanniam a Julio Caesar in latas leges jureare compulsam, Britain was by Julius Caesar compelled to swear Obedience to the Roman Laws, are by no means to be credited; for it was Claudius,

(a) The Laws of Oleron were made and declared by Richard the first King of England in his return from the Holy Land; they take their name from Oleron the Place of their first Publication; a small Island then belonging to Richard the first situate at the Mouth of the River Gironde near the Coasts of Aquitaine—Dawson's Origin of Laws p. 121.

(b) He made a judicious Collection of whatever he found on Record from the arrival of the Saxons to the 8th Year of the reign of K. Stephen, 1142. Ulter stiles him the Chief of our Historians. Rapin's Hist. v. 2. p. 472.
as Ethelwardus (c) tells us, who, Britonum Ræges subject servire sibi, forced the British Kings to submit to him, and reduced the more southern Part of the Island to the Roman Power. And that Use from his Time, in which the Roman Colonies were first transplanted hither, continued among us till the Roman Empire so greatly declined in Britain, that its Inhabitants having shoke off the Roman Yoke re-assumed their former Power, and becoming their own Masters, entirely laid aside, or at least so neglected the Imperial Law, as such, that it quickly vanished. Some Remains however of that Law, which through Custom had been so blended with the British Laws as to put on their Nature, were perhaps, neither could it well be otherwise, necessarily retained.

(c) He was a Sæc. Historian of the Blood Royal and lived till the year 1090, but did not continue his Chronicle so far. Nicolson's English Hist. Lib. Oct. Ed. p. 122.
S E C T. II.

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.

The Usage We have before described of the Imperial Law, chiefly appears in the Colonies transplanted, as we have said, hither, and in the Civil Administration of Affairs during the aforesaid Interval among us. And it is plainly enough handed down § to us, that these Provincial Colonies, for the most Part, made Use of the Roman Law, consequently the Imperial in Force under the Caesars, and that the aforesaid Colonies, were no more than mere Representations of the City of Rome. And Tacitus || expressly tells us, that the first Colony among us, which was that of (a) Cambodunum

(a) The Story more at large is thus told. Severus, to wean his Sons Antoninus Caracalla, and Geta, from the Debaucheries of Rome, and keep his Legions from Idleness, came over into Britain; and leaving his Son Geta with some of his Counsellors and intimate Friends, to govern the inland Parts, subject to the Romans, went himself with Antoninus, at the Head of an Army against the Caledonians: In which Expedition, as they were riding together, Antoninus stopping his horse, of a sudden drew his Sword with intent to kill
Sec. 2. annexed to Fleta.

dunum had been transplanted to Britain, with a View, not only of being an Aid in Case of Rebellion, but, imbuendis Sociis ad officia Legum—likewise of training up their fellow Subjects to enable them to discharge the Duties required by the Laws—By which it is plainly insinuated, that as many of the Britains also as were Associates to the Romans, either as their Friends, or as being by the Fate of War subdued or reduced under their Power, were then to be trained up to the Offices or Observation of the Duties prescribed by the Imperial Law, and they were without doubt instructed after this Manner by that and such other Colonies. And that this Matter was easily to be brought about, is still on another Account more evident. For the antient Law, which was nothing but the Discipline of the Druids, (as may be concluded from Julius Caesar, and the highly probable Conjectures of Learned Men, who are of Opinion that that Discipline was in the Administration of all Things, sacred and profane, equally in

kill his Father; but was prevented by the interposition and Glamour of the Soldiers. Severus passed this over, and shielded his Regiment till he came to his Quarters, where he ordered his son, together with Papinius and Caesar, his intimate Friends, to come to him; and having commanded a Sword to be laid before him, reprimanded his Son for making so villainous an attempt in the Sight of the Allies and Enemies; and said, If you are desirous of killing me, kill me here, &c.

Duck of the Use and authority of the Civil Law in Eng-

p. 10.
force among the Gauls and Britains) that Law I lay being, as it is reasonable to believe it was, taken away by Claudius both from the Britons and Gauls, it became for that Reason less difficult to introduce (a) every where new Laws, consequently the imperial or those of the Conqueror. We have elsewhere, with regard to this point, collected several other Matters relating to the Colonies of this Province. We know four or five of their names, and there were no Doubt of it many others which we judge needless to repeat in this Place. Now the civil Administration of Affairs among us under the Romans, in which the first Kind of Use of the imperial Law prevailed, is plainly discernible in the Consular, Praefidial, Proprietary, Offices or Dignities of the Vicar of Britain, and other such Officers who were under the Praefectus Praetorio of the Gauls. And the most learned William Camden, who accurately treats of them out of the Antients, as well in his Account of the Dignities of the western Empire, as of those of the Romans in Britain, most expressly mentions them, as Persons governing in this Part of Britain

(a) Selden elsewhere observes that the Druid's being prohibited the exercise of their Rites, such Nations as were governed by them in Point of Law, viz. the Gauls, Briton, &c. grew regardless of their authority; and not respecting them as before, became prone to receive and embrace the Roman Law. Seldens Notes on Fortescue p. 11, 12.
according to their own laws. And what Julius Caesar says of Gaul, may also it is evident be applied to Britain in the State in which it was at that time—Respice finitimam Galliam quae in Provinciae re-
\textit{daet}a Jure et Legibus commutatis perpetua premitur servitute. Behold says he the Neighbouring Gaul, its Rights and Laws being altered, reduced into a Province, and kept under perpetual servitude, but we find the most memorable Instance of all in the reign of Septimius Severus Augustus, who divided, according to Herodian, \textit{†} about the Year of Christ two hundred, \textit{εἰς} Ἔν υπερσεβίας \textit{πεῖ} ὡς Ἐκκρισίαν\textit{εἰς} the Empire or Power of the Nation into two Principalities or Prefectures, which some learned men take for two Governments \S or Praetorian Prefectures, that is two Prefectus Prætoriorum, each of which were in their respective Prefectures, to decide according to the Roman Law. The same Emperor likewise, afterwards bringing with him into Britain his two Sons the Caesars, Bassianus and Geta, they being his appointed Successors, with a View of removing them from the Luxury of Rome, placed Geta his youngest Son at the Head of the Judicature in this Nation, after having assigned him out of the eldest or chiefest of his Friends Associates. Herodian \textit{||} tells us as much, for he says that \textit{τίτην καθαλιπτων} ἐν τῷ ὡς Ρωμαϊός θηρα δικασθαυ ὡς \textit{γε} τα λοιπα διανικαυστα απολήμφῃ της ἀρχης (\textit{δι}ς αἰτείς Σωτέρες).
Selden's Dissertatio

Ch. 4.

The Emperor, having left Geta in that Part of the Nation subject to the Romans, to decree Justice and Administer the other civil Affairs of the Government, when he had assignd him out of the most antient of his Friends Senators or Associates or Councillors, took with him Antoninus, that is Bassianus, (the both of them were in reality even in their Fathers life time called by this name) against the Persians. And indeed this Geta was, as Sertorius says, Moribus asperis sed non impius, et tractator literis assquevendis et tevis veterum Scriptorum et paternarum etiam Sententiarum memor—Of a severe, though not impious, Disposition, and a Tractator, which is as much as to say, a scholastic, and in his Pursuit of learning both tenacious of the Opinions of antient Writers, as well observant of his Fathers Councils. So much therefore of Britain, as was at that time under the Roman Power, or that Part South of the Wall or Trench of the Picts, which runs across Cumberland, was, as to its civil Administration and Distribution of Justice, subject to Antoninus Geta, he being then the Praefectus Praetorio, or next to the Emperor, and a sharer in the Government here.

S E C T.
Papinian, styled the Prince of ancient 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 Ulpius and Paulus also were, as well as some others of the same Profession their Cotemporaries.

Now among the aforesaid Collegues or Councillors, as well as the Assistants to the Emperor himself, who, being very learned in the Law, commonly gave daily Audience with respect to Points concerning it from Morning till Noon; it seems to be past all doubt, that Emylius Papinius had among us the chief Place, as being in the Opinion of the Antients the Asylum of the Law, or (as Cajacius judged him to be) the most learned Lawyer of his Time, or that ever was, or would be. (a) His Authority before the reign of Justinian was so superior to that of all others, that

(a) Baldwin an eminent Commentator on the Civil Law admonishes all Persons to reverence the divine Providence, for having raised a Josephus in Egypt, a Daniel in Babylon, a Pericles at Athens, and a Papinian at Rome. Ayliff's Prelim. Discourse. p. 23.
that where there was an Equality of opposite Judgments, that which Papinian was of prevailed.|| He was also a very great Favourite of the Emperor Severus Augustus, and studied with him the Law under Cer- bidius Secula; and the aforesaid Em- peror committed his two Sons to his spe- cial Care. It is at least most certain, that he not only accompanied Sept. Severus § into this Part of Britain, but discharged likewise the Offices of the Law in the City of York, in which the Emperor held his Prætorium and Tribunal, where it is past all Dispute, that not only the Emperor himself, but sometimes Geta also with the above-named Councillors decided Causes. Xiphilinus || says from Dio thus much of Papinian, in the place where he mentions Baebianus's Attempt to kill his Father on the Road, who notwithstanding, as this Au- thor informs us, then took no Notice at all of it, but ascending the Tribunal (at York) and dispatching what was necessary, re- turned to the Pretorium (§ παλατία τὸν Ἐμ- πετρον, τοὺς πατρίδος Ἐμπετρον, &c.) and then send- ings for his Sons, Papinian and Cæsar, made a Speech to Baebianus concerning his horrid Design; in which, says he, If you are de- sirsous of killing me, kill me here, &c. but if you refuse, and are afraid to perpetrate it with your own Hand, here is (παλατίος ἐπὶ ταχυος) the Praefct Papinian whom you may command to kill me; for you being Emperor, he will punctually execute what- ever
ever you order. Thus far he. This Pa-
pinian was Praeceptus Prætorio, † both to
Severus and Antoninus Caracalla or Bassa-
nus his Successor: As it is therefore suffi-
ciently evident, that that Sun and Asylum
of Right, as well as Treasure of the Law,
(for to Spartianus § styles him, and he is
indeed honoured in many Places of the Jus-
tinian Code with surprizing Elogiums) de-
creed according to, as well as taugh, the
Imperial Law in our Britain: so he may
well be looked upon to have been the
Chief also of the Councellors, assign'd to
Geta,* from among his most antient Friends,
he then presiding here over all judicial
Causes. (a) This was the Person, whose
Works it was, on Account of their won-
derful Sublimity and Subtillity, thought a
great Piece of Premption to pretend be-
fore three Years Study to understand; from
that Time afterwards, usuallly called Papi-
nianifs. But I do not find that any of the
Civilian Biographeers mention his having
been in Britain, and not one of the antient
Historians, except Dio Cassius (whom in-
deed one may reasonably Conjecture from
his Writings, † to have been also an Asso-
ciate here to Severus in judicial Causes) de-

(a) The Emperor Caracalla having murthred his Bro-
ther Geta, would have perswaded Papinian to palliate the
Fratrieides, but refusing to comply with the Tyrant's Or-
ders, he caused him to be put to Death, and soon after-
wards his Son, a Youth of a promising Genius. Gratian
delivers this Fact. Neither is it at all improbable, that Paulus and Ulpian, as well as some other Persons of that Age, eminent for their Knowledge in the Imperial Law, formed at that Time among us a Part of the Caesarean Assembly; since we find that Associates were assigned Antoninus Geta, out of the most antient of his Friends (and the learned know this to have been in that Age a Title (a) of singular Dignity † in the Imperial Palace and Assembly, and not a bare Honour annexed to an Office.) And we are of Opinion, that during the Prefecture of Papinian, who it is evident was here, Ulpian and Paul were of the Arectfo- rial Tribunal. || And we may without Scruple believe, that the Rescript directed to one Cecilia, concerning Mancipia justly or unjustly obtained, given at York by the Emperors Severus and Antoninus, Faustus and Rufus being Consuls, to wit, in the Year of Christ 210, || had its rise from, or was occasioned by some Britisb Context. Thus it appears, that the Use of the Imperial Law was in Force here, at the same Time that the above most learned and eminent of the Roman Lawyers flourished among us. And the extensive Use of the same Law in this Part of Britain subject to the Romans, is moreover hence confirmed, that when the same Emperor was at the

(a) Of the Praetorian Prefect, his Power and Office. See Dyllif's Civil Law, p. 166.
Point of Death at York (where he expired, the Civil Government such as we have described it, having flourished above two Years † under him) he said, Turtbatam || se Rem publicam ubique accipisse, pacatam etiam Britannis relin quere. That at the Time of his ascending the imperial Throne, he found the Common-wealth every where in Disorder, but that he left it settled, even among the Britons. And in Consequence of such Use as we have described of the Roman Law among us, the following Passages occur in the Antients.—Latia sub lege Britanni. †—The Britains under the Roman Law — And the Testimony of § Tacitus, not to mention others, to the same Purpose, is so very express, with regard to the Prevalency of the Roman Manners among the Britons, that the hither Part of Britain, should rather have been called Romania than Britannia. || The Provinces, Villages Prefectures, and Towns here, were therefore at that Time governed by this Law, agreeable whereto William Camden * speaks * Camden, Brit. very truly of London, where he remarks, that that City was neither distinguished by the Name of a Colony, or a Freeburgh—Prefecturam itaque ut opinor, constituerunt Romani sic enim vocabant Opida in quibus Nund ine agebantur et jus dicebant, ita tamen ut magistratus suos non habercnt, sed Prefecti quotannis in ca mitterentur qui jus dicerebant, quod in publicis Negotiis nempe census tributorum, vestigalium, Militiae, &c. Vetr. Pret. Cat. talect. l. iv. tit. 7. § Tacit. in vit. Julii Agricolae, de Excid. Brit.
For which Reason, says he, I am of Opinion they made it a Prefecture, for so they called the Towns wherein there were Fairs and Courts of Justice kept, not that they had Magistrates of their own, but had Prefects sent them yearly to do Justice, who was to act in all public Affairs, such as Taxes, Tributes, Imposts, the Business of the Army, &c. according to the Instructions they received from the Roman Senate. — The Freeboroughs also, if there were any such, were subject in the same Manner to the imperial Law here, as many of our Cities and Towns, which have their own Customs and peculiar Laws, are subject to what we call the common Law of England, for every one knows, that such Customs and particular Laws receive their Interpretation from, and are very often restrained by, the Authority of the common Law.

S E C T. IV.

The Use of the aforesaid Imperial Law, continued among us three hundred and sixty Years, or thereabout:

NOW the Power of the Imperial Law, such as we have represented it, though some Times varying according to the different
ferent and fluctuating State of Affairs, continued among us for three hundred and sixty Years, or thereabouts, that is from the Reign of Claudius Caesar; (for we justly from that Time date its Commencement, not from the Reign of Julius Caesar, or of any other of Claudius's Predecessors, who rather aimed at the entire Conquest of, than subdued any Part of Britain) down to the Time when Rome was taken by Alaric the Goth. That is from the Year of Christ fifty, to the Year of our Lord four hundred and ten, or thereabouts, to wit, about the Time when first Marcus, then Gratian, and lastly, Con-
stantine were, through a Defection of the People from the Roman Power, here chosen Kings or Emperors, Constantine also, who had past from Britain into Gaul, being quite oppressed by the bad Success of his Affairs, and soon after killed, the Barbarians likewise from beyond the Rhine, having invaded at their Pleasure all Things, the Western Part too of the Roman Empire being so weaken'd as not to be in any Condition of succouring their Friends: Some of the Gauls, as well as our Britains, were compelled by Necessity, as Zosimus says, τὸς Ρώμηαν Ἰσαύριον, To revolt from the Roman Empire, and they no longer professing Obedience to the imperial Laws, lived as they thought proper. And according to the above Author, those Celtic Nations,
tis Βριτανικος προτεινεναι, following the Example of the Britons, καθ' τον έν τοις έπειξεσθαι τον πετετο. Ενδεικνυε γαρ τον Ρωμανου άλογον, ουδεν δε κατ' εξουσια πολιτεμα καθεσθαι, freed themselves after the same Manner. For having expelled the Roman Governors, they constituted according to their own Will a kind of Republic. To this Time, the last Period of the Use of the aforesaid Imperial Law, as such, or as having Authority by Virtue of the Government of the Caesars, is to be fixed. It could not however otherwise fall out, but that some Remains of the Use of the Imperial Laws, which through so constant a Custom had prevailed among us for so many past Ages, should not, at least in some Measure, subsist in that new or lately settled Government, which owed its Rise to the Free Will of the People. These Remains of the Roman Laws derive their present Force from the Consent of those who make Use of or moderate them at their Pleasure, they not at all, as before depending on the Authority of the Roman Emperors or Caesars. And Beda § affirms the same, where he tells us that—Ex eo tempore Romani in Britannia regnavi cessarent, from the Time Rome was taken by the Goths, the Romans no longer reigned in Britain which is also sufficiently confirmed by Procopius.* Others fix the Period of the Roman Government in this Matter lower, to wit, to the Year of Christ four hundred thirty four,† or four hundred thirty five, or about

---


Vandall. l. i. p. 94. b.

† Chronolog. Sax. &c. vid. Jacob.

Armachi Gonic Britannorum Eccle, primi veteri.

G. 12. p. 599.


† Procop. lib. viii. cap. 26, ab anno 507.
about the Middle of the Reign of Theodosius the younger. An antient Anglo-Saxon Chronology, places it in the Year four hundred thirty five, when Roman abnegates Romanbath, when Roman Romans were conqueror on Britaine.

The Goths at this Time laid waste the City of Rome, after which the Romans never governed in Britain. But what is added, that that Government continued in this Manner, from the Reign of Julius Caesar, is owing to the Oversight of some antient Writers, who, without well weighing the Matter, considered his landing—in questos Britannos—as Lucan expresses it—with a View of subduing the Britains—as a Victory. And other Authors are, with respect to the Abolition of the Roman Government here, variously divided, but our Intent in this Place is not to criticise on the more minute Niceties of Time.

Now what we have already said is, in my Judgment, with regard to the Matter we are handling, all that is necessary. And it appears to me, that the Authors, who make mention of a later Time, ought rather to be understood of the Departure of the Romans from hence, than of the End of the Roman Government in Britain.
CHAPTER V.

SECT. I.

An Account of the Books in which the aforesaid imperial Law was contained; the Use of this Law, as we have before shewn, continued here during the above-mentioned Interval of the Roman Government, or for well nigh 360 Years in this Nation.

The imperial Law, the Use whereof was admitted in this Part of Britain, after the Manner we have before described, during the Interval already mentioned of three hundred and sixty Years, or thereabouts; to wit, from the Reign of the Emperor Claudius, to that of Honorius, when the Roman Government ended here, was made up of the Remains of the (a) 12 Tables.

(a) Twelve Tables. To compose the Differences between the Patricians and Plebeians; and in order that the City of Rome might be governed by Standing Laws, it was agreed about the Year 300, to send a Deputation into
Tables; the antient and later Senatus (b) Consula and Plebisicita; (c) that is, of so many of them, as were by Princes confirmed, ratified into Greece, to inspect the Laws and Discipline of those States, and to get the best Information they could towards compiling a System for the Use of Rome.

The Delegates, who were Spn. Pobthaminus Albus, Aul. Manlius Vulso, and Serv. Subtilius, Camerianus, returned at the Expiration of three Years: Decemviri were created in the Room of Consula, and they drew up a System of Laws from the Report of the Commissioners.

These Laws (sometimes called (Legis 1:consivirales) were divided into ten Heads, Titles, or Tables, and proposed to the People for their Approbation; and upon two more being added the Year following, they got the Name of the Laws of the Twelve Tables.

This System of Laws being added to the antient Customs of Rome, it became the Ground Work, or Materiæ prima of all the Roman Civil Law, and Cicero, b. i. de Orator, has pronounced these twelve Tables to be of more excellent Use and Advantage to Mankind than all the Writings of the Philosophers.

Several Writers have collected these Laws, but Fran. Pithou has the Reputation of having reduced them into the best Method. Taylor, p. 8. Ayliff, p. 9.—Dec., p. 11. Kennet's Antiq. p. 117.

(b) Senatus Consula. The Sæta were of three Sorts.
1. Orders, Votes, or Resolutions of the Senate in Affairs which belonged to their particular Consideration.
2. Such Acts of the Senate as tended to ratify and confirm the Acts of the People.
3. Under the new Period of the Roman Emperors, when the Comitia were translated, a Compa ad Patres, they were the only Remain of Legislation (such as it was) that the Emperor had left in the Hands of his Subjects. Tayl. 239. Ayl. 12. Brev. 42.

(c) Plebisiceta. A Plebiscetum, was what was enacted by the People without the Concurrence of the Senators, upon the Request of one of their own Magistrates. See Note p. 41, (b) Tayl. p. 197, Ayl. p. 12, Brev. p. 12.
tified and retained; of the Praetorian (d) Edicts; of the antient Books of Gaius, Sceroila, Papinian, Ulpian, Paul, and the Writings of such other antient Authors, out of which the Pandects of Justinian were afterwards compiled; and lastly, of the imperial Constitutions (f) promulgated before the reign

(d) Praetorian Edicts. The Office of Praetor was created A. V. C. 387, and his Jurisdiction was more of Equity than Common Law Proceeding. Tayl. 213.

The Praetorian Edicts were certain Rules or Forms published by the Praetor at the Beginning of his Office, and signified the Method by which he bound himself to administer Justice that Year, and these Edicts were only annual. Tayl. 214.

These Edicts in Honour of the Magistrate were sometimes called, The Jus Horatianum, Ayl. 13.

But these Pastors, either for their own private Advantage, or in favour of some particular Persons, usually changing their Yearly Edicts, C. Cæcilius a Tribune of the People, A. V. C. 686, proposed a Law, ut Praetores ab Edictis perpetuis (not perpetual, but uninterrupted and invariable, during their Magistracy) jussi diverterint, so that it was not thence-forward lawful for the Praetors, during the whole Year of their Office, to recede from that Law, which they had declared to the Citizens they would make Use of, when they entered upon their Trust. Tayl. 214. Ayl. 18.

The Emperor Adrian about the Year of Christ 137, caused these Yearly Edicts of the Praetors to be epitomized by Salutius Julianus, and this Edict was termed the Perpetual Edict, because it was not subject to Change and Alteration, receiving a Validity for the Time to come, not from any Law of the Praetor, but from the Authority of the Emperor himself, Ayl. 17. Brev. p. 19.

Thus the Jus Praetorium made up of these Edicts, gained a Constancy, was commented upon, and was rated to that Repute, that the Study of the Civil Law, was no longer begun from the Study of the Twelve Tables, but the perpetual Edict. Tayl. 215.

(f) Imperial Constitutions. After the People had by the Lax Regia transferred the Empire to Augustus. It came to
reign of Theodosius the younger, comprising of course as well those Sanctions transcribed into the Gregorian and Hermogenian Codes, as the rest which are found in the Theodosian, I mean all those, which, as we have before said, were prior to the final Period of the Roman Government among us. As Gregorius,* a Student in the Law, inserted into his Code, the principal Laws from the Time of Hadrian to Valerian, and Gallienus; to Hermogenes enriched his, with the most material Laws enacted from the Reign of Claudius, Gallienus's Successor, down to Dioclesian; consult concerning this Matter, Cujacius in his Preface on the Paratiles in the Justinian Code, from whence Poffeoin* transcriptioned what he says about these Codes.

The Books which Paprius Justus † composed of the Constitutions of the two Imperial Brothers, were of this kind. Both the learned in their Studies, as well as the Judges in the Courts, made Use, during the aforesaid Interval, of all the above-mentioned Works. But as the last Period of that Interval, or of the Roman Government in this Nation, must be dated one hundred Years, or thereabouts, before the Reign of Justinian, whose Body of Laws we pass that whatever the Prince ordained, either by his Rescript, or commanded by an Edict, or decreed on the Cognizance of any Matter had the force of a Law, under the Style and Title of an Imperial Constitution, Ayliff p. 15. Bev. p. 22. Tayl. 223.

* See Note p. 78.
we now make Use of; it was for that Reason impossible there could be at that Time either among us, or any where else, any Use of the "Justinian Law as such.

S E C T. II.

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.

NOW the Theodosian Code, containing the principal Constitutions, was not very long after, or rather according to others, about the very End of that Interval, that is, of the Roman Government here, to wit, in the fifteenth Consulship of the same Theodosius, and the fourth of the Emperor Valentinian the third, in the Year of Christ 435, promulgated and ratified by a Novel or Law made for that End. And if Credit can be given to the printed Codes, * which in this point all agree, it must be right. But in my Manuscript, in which that Law is not joined with the Novells, but prefixed, as it ought to be, as a Preface to the Code itself; as it likewise is in the Sichardian † Edition (it is read Theodosio Augusto sedecies Consuli—In the sixteenth Consulship

Novell. Theo
S. 4. C. 2.

† Sichard, 1518.
fulship of the Emperor *Theodosius*, that is, he and *Faulius* or *Feslus*, being Consuls, which corresponds with the Year of Christ 438; and it is evident, that *quindecies* fifteen Times is in that Place wrong, and that the printed Codes are in this, as well as in many other Passages, corrupted; for the Series of Consuls in the Calendar then stood thus,

*Christi 435.*  *Theodosius Aug. XV.*  *Valentinianus IV.*

436. *Isidorus, Senator.*

437. *Ætius, P. Sigisvultius.*

438. *Theodosius Augustus, XVI.*

*Faulius seu Feslus.*

And the Edict to *Darius Praefectus Praetorio* of the East, put forth the Year before the sixteenth Consulship of *Theodosius*, or the Year of Christ 437, to wit, *de Decurionibus et Silentariis*, is to be found in that Code; § for it is thus subscribed, *Dat. XVIII. Kal. Aprilis Constantino post consulatum Iisdem et Senatoris.*

Given at Constantinople the 18th Calends of April, after the Consulship of *Iсидore* and *Senator* — which answers to that Year. Every one therefore must see, that the Edict of the Emperors *Theodosius*, and *Valentinian*, to *Florentinus Praefectus Praetorio* of the East, concerning the Authority of that Code, bearing Date in the fifteenth Consulship of *Theodosius*, is manifestly wrong
dated. That Edict then is evidently to be ascribed to the sixteenth Consulship, or the Year of Christ 433. Wherefore those Chronologers, such as Sigerinus, Contius, Freymanus, Baromus, and Calvisius, the Author of the Chronology annexed to the Theodosian Code, and some others, who place the Edition of this Code three Years before, are manifestly guilty of an unpardonable Error. This was the first Code of imperial Sanctions, put forth by supreme Authority, or under the Protection of the Emperors, for Gregorius, (a) Hermogenes and (b) Papirius, compiled their Codes, merely as private Persons, wherein none but the Constitutions of the Pagan Princes before their Time, were contained; but in the Theodosian (c) Code, the Sanctions of the Christian Princes.

(a) Gregorius and Hermogenes were Heathen Civilians, who lived in the Time of the Constantine, and fearing left by the new Constitutions of the Christian Princes, the Heathen Jurisprudence should be lost, they applied themselves to the Compiling their Codes, in which they united together the Laws of the Heathen Emperors, from Adrian down to Diocletian, in order as much as possible to preserve the Antient; but all that remains of these two Codes, are some Fragments which Cujacius has placed at the End of the Theodosian Code. Origines Civ. Hist. of Naples b. 1. p. 82. Astiff 19. Rec. 62.

(b) This was Papirius Sylius, who flourished under the Reign of the Imperial Brothers Antoninus Pius and Marcus Antoninus — He wrote twenty Books of Constitutions, and made a Collection of the Rescripts of the above Emperors. Grat. de civ. Jurisem : 1. 2. c. 8. Astiff 19.

(c) Theodosian Code. It was the younger Theodosius, who compiled this Code, after the model of the Gregorian and Hermogenian Codes, and it is now extant with an useful Commentary by Galafredus. The eight Persons made use of:
Princes alone are admitted, to wit, such as were published by Constantine the Great, and his Successors, before the Appearance of the Theodosian Code, and selected by Theodosius and Valentinian the 3d.

S E C T. III.

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

NOW the aforesaid Emperors, in conferring the Theodosian Code decreed—Licentiam fore nulli ad forum, et quotidiana as advocaciones jus principale deferre vel litis instrumenta componere nisi ex his vide- licet Libris qui in nostris nominis vocabulum transferunt et sacris habentur in seriniis. Quamquam nulli retro Principum Aeternitas sua detracta est; nullius lateris occidit nomen. Ino Lucis gratia munerae clarituo- dine consultorum, Augusta nobiscum societate conjunctum.—That it should not be lawful for any one to bring any Matter of Moment to be decided before the Court or Place where daily Consultations were held, or to draw up the Forms of Pleadings, except

of by Theodosius, to assist him in the finishing of this Work, were Antiochus, Maximin, Martyrius, Sopranus, Aplleol- rus, Theodosius, Epigoneus, and Procopius, and it contains the Constitutions of 16 Christian Emperors i.e. from about 312 to 438.

cept out of these Books (to wit, out of the sixteen Books of the fame Theodosian Code) published under our name, and deposited in the sacred Archives; though the immortal Reverence due, according to their respective Dignities, to former Princes, is not hereby derogated from, neither is any Legislator's Name hereby sunk into Oblivion, but rather, numerati, honoured (for it must from the Manuscript be so read, instead of what is in the printed Copies at one Time mutuati, another mutati) by the bright Station of great Lawyers, and by being joined in an august Society with us.—The fame Code * also ratified the Writings of Papinian, Paulus, Gaius, Ulpian, Modestinus, and those of others, whose Treatises and Sentences, the foregoing Authors had mixed with their Works; such as those of Secundus, Sabinus, Julianus, Marcellus, and every other Writer, of whom the above Authors made honourable mention.—ubi autem diversae Sententiae profederebantur, potius numeros vincebat autorum vel si numeros equalis esset, ejus partis praecepedebat authoritas in qua excellentis ingenii Papinianus eminebat; qui ut singulos vincebat, cedebat duobus. Notas autem Pauli arque Ulpiani in Papinianus corpus factas, sicut dudum statutum est, praecipiebant infirmari. Ubi autem I pares coron Sententiae recitabantur, quorum par consedatur Authoritas, quod sequi deberet, eligebat moderatio judicantis. Pauli quoque sententias semper valere.—But when
when different Opinions were produced, the Majority of Authors prevailed; or if the Number was equal, the Authority of that Party had the Preference, which had the Opinion of that excellent Genius Papi- nian in their Favour, which although of greater Weight than that of any single Per-
son, was yet over-ruled by the Judgment of two. They took away the Authority which had been allowed to the Notes made by Paul and Ulpian, on the Book of Pa-
pinian. But when the Opinions of Per-
fons upon a Level in Authority were equally divided, the Judge was at Liberty to de-
termine which was to be followed. They likewise ordered that the Sentences of Paul should always be of weight. Then followed the Novel Constitutions of the same Theodosius, as well as those of the above Emperors Mar-
tianus, Majorianus, Severus and Anibemius.
—Now Theodosius and Valentinian, among other Matters dispatched to the Roman Se-
nate, pasled a Decree, concerning what we have mentioned, about ten Years before the Publication of that Code, or in the Year of Christ 428, the Emperor Theodosius being then in his 12th (not in his 7th, as is erroneously put in the printed Copies) and Valentinian, in his 2d Consulship; and the foregoing Number which Valentinus Forsterus,* without Examination too securely relying on the printed

(a) There are five Books of them, and they are annexed to the Theodosian Code.
printed Copies, retained in the Place where he describes this Sanction, is justly corrected by Baronius. The above Emperors likewise transcribed the same into their Code, as appears by the Anianean or Alarician Interpretation, where we find — Gregorianum et Hermogenianum ideo Legem istam praeferre quia suis authoritatibus confirmabantur ex lege priore sub titulo de Constitutionibus Principum et Edictis.—That that Law took no Notice of the Gregorian and Hermogenian Codes, because they by their Authority had been confirmed by a former Law, under the Title of the Constitutions and Edicts of Princes. It is true indeed, that is the first Title of this Code, but I cannot see any Thing in it, in the least tending to corroborate those two other Codes, or any principal Constitutions of former Times. Now from what has been already briefly said, it is sufficiently plain, in what Books the Imperial Law, at that Time in Force, was contained; whence one may also partly judge of the Law in Use immediately before among us.
SECT IV.

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 Avicennian or Alaricivian Breviary.

NOW the Roman Empire in the West, if we except the narrow Boundaries of the Exarchate (a) of Ravenna being some Time

(a) Exarch of Ravenna. The Provinces of Italy had ever since the Time of Constantine the Great, been governed by Consulat, Curiales, and Praefatos; no Alteration in the Government having been made either by the Emperors, who succeeded C. gallus, or by the Kings of the Franks: But Ravenna, in the beginning of the Reign of the Emperor Justin, was lent to feeble Burgundians, with an absolute Power and Authority suppressed those Magistrates, and in their Room placed in each City of note a Governor, whom he distinguished with the Title of Duke: For himself he took the Title of Exarch, which by the Greeks was given to those who presided over a Diocese, and consequently over the many Provinces of which the Diocese was composed. This Title was adopted by the Successors of Leoninus, who residing, as he had done, at Ravenna, were there called the Exarchs of Ravenna: They governed all Italy, naming and removing the Dukes at their Pleasure: and to them the People had Recourse in all Matters of
Time after, by the Irruptions of the Goths, Vandals, and other Northern Nations, torn to Pieces, and dispersed into different Kingdoms, in a Manner dwindled into nothing; on which Account the Use of the Imperial Law we have treated of more antient than the Justinian, must of course, as such, or as depending on the Authority of the Emperors, that Empire ceasing here, no longer subsist among us. It was however, and that too, under the Name of those who first gave Sanction to it, in such a Manner retained and allowed of by the aforesaid conquering Nations, as to be about that Time, by King Theodoric the Ostrogoth, and by some of his Successors, made Use of at Rome, and through Italy, in the public Administration of Affairs; though it was, as is very evident from the miscellaneous Works of Cassiodorus, interspersed with the new Edicts of those Kings. And Alaric the second King of the Wisigoths in Spain and of the more southern Gaul, selected and ex-

Moment. This Magistrate maintained the Power and Authority of the Emperors of the East in Italy for the Space of one hundred and eighty three Years, that is from the Year seven hundred and eight, when Lucius was sent into Italy, to the Year seven hundred and fifty one, when Eutychius, the last Exarch, was driven out, and Ravenna taken by Aethelwulf King of the Lombards; from this Time it became a Dukeedom, and was no otherways treated than the other lesser Dukeedoms of which the Kingdom of the Lombards was made up.

explained, by the Assistance of (b) Anianus, both out of the Theodosian Code, and several other Books, different Kinds of Laws, and decreed, It should not be lawful for any one to offer any Thing by Way of Argument, concerning the Laws, or Rights, than what that Book so compiled contained. That Book, which may be called either the Anianian or Alarician Abridgment, is the very Theodosian Code, though not quite so complete as that we now make Use of, with the other Novels of the Emperors Theodosius, Valentinian, Martian, Majorian, Severus, and Anthemiun, annexed unto it, as well as some Things taken out of the Gregorian and Hermogenian Codes, together with the Anianian Interpretations, such as they are, though sometimes, (as the learned often remark) too remote from the Sente of the Imperial Law: It moreover contains the Fragments of Gaius, Paul, Ulpian, Pasinian, or (as he is there called) Papian, though sometimes altered as the Transcriber thought fit, and the small Piece of Paullus Metianus, as I think, explaining the

(b) Assistance of Anianus.—Anian Chancellor to Alaric, for many Ages, had the Honour of being thought the Compiler of this Breviary of the Theodosian Code; but Jacob Gothofredus, in his learned Preface prefixed to the above Code, is of Opinion, Anian had no Hand in composing it; but that the Compilation is owing to Gaius, and his Collegues, and that it was only published and subscribed by Anian, by Order of Alaric at Eyre in Genova, in the Council of both the Orders.

the Terms and Characters made Use of in pecuniary Affairs. Anicius † him: If says
Ex his omnibus Jurisconsultibus et
Gregoriano, Hermogeniano, Caio. Papiniano,
et Paulo quæ necessaria causæ praetentum
temporum videbantur exigimus. — We have
selected out of the Gregorian and Hermo-
genian Codes, and the Lawyers: Caio, Pa-
inian, or Papian, and Pau', what seemed
necessary towards deciding the Causes of the
present Times. Yet some are of Opinion, †
that the first eight Books only of the The-
odosian Code were contained in this Altri-
cion Breviary. Now the other Paris an-
nexed, bear the Name of Theodosian, as
well as the very Code of that Emperor;
for which Reason, see Carnutensius, * and
Gratian, § expressly call some of the Sen-
tences of Paul, Theodosian Laws; and for
the same Reason the Sentences and Inter-
pretation of Paul are in plain Terms also
anciently called † the Aniciam Law." See,
concerning this Matter more in Ioannes Sa-
voro on Sidonius (c) Apollinaris,* where he
likewise accounts for what is said of Se-
ronatus (d) (who flourished about the Reign of

(c) Sidonius Apollinaris. He was Bishop of Clermont
in France, and attained to that Reputation of Learning
as to be esteemed the greatest Man of his Time; he died
in the Year 432.

(d) Seronatus. This Man lived in the Time of Theo-
drom, King of the Huns, and was Prefect of the Gar
under Thracius, the then Roman Emperor; but by fa-
avouring the Party of the Goths, and betraying his own
Prince, set himself in Opposition to the Romans. Orig.