published throughout various Kingdoms; though plainly of no Use to the oppressed and to such as applied for Redress, because little Respect was paid to them by the Princes and Grandees of the Kingdoms, or by the common People subject to them—

It is probable indeed, that this is the very body of Decrees, which being immediately afterwards confirmed by Pope Eugenius the 2d, and published under the Name of Gratian, is now become the first and most famous part of the Canon Law. For as soon as the Emperors ordered public Lectures on the Imperial Law at Bononia, and appointed for that purpose a peculiar Faculty in the University of the same City; the aforesaid Pope Eugenius also ordered the like to be done, with regard to the Papal Law contained in the Body of Gratian. Now what Pope Innocent did, coincides with the year 1139. And I persuade myself, that as this Pope, dreaded left the Imperial Law, as such, then beginning to revive in the West, should gain too great a Footing; he therefore craftily obtruded on the World the papal Decrees, which before this time were different, according to the various Customs of Nations and People, and not so uniform as they were afterwards looked upon to be. But left the papal Laws should be in too great vogue in the Universities, and consequently prevail too much in Matters of public Government, The Princes and most of the Republics also in the West, consider-

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ing the Imperial Law, as a Bulwark in favour of their Privileges against the Pontifical Artifices, cherished and set a great Value upon it. And as the Court of Rome afterwards consented, that the civil Law should be publicly admitted, † where their Canons were not opposite to it; so indeed did the Princes and Republics in their Turn, for the most part, receive the Pontifical Canons, whenever they were not repugnant, either to the Imperial Law where received, or to the Customs or Laws of the Country.
CHAPTER VII.

SECT. I.

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 Bologna.

The antient Imperial Law, called the Theodosian, as well as the more modern or Justinian, was made Use of, in the Manner above concisely shewn, down to the Middle of the 12th Century, or somewhat before, thro’ those Parts of the West, in which the Goths, Lombards, and others settled; among whom, the Theodosian Body of Laws, was, as we have before related,
variously received. In short, none but the Learned in their Studies, Writers and the Clergy in their Decrees and Transactions, made use, during that interval, except in the narrow Confines of the Exarchate (a) of Ravenna, of the Justinian Law in the West. And therefore that Law was not received among us, who never made use, during that Interval, as other Nations did, even of the Theodosian Code. For when the Anglo-Saxons, about the End of the Roman Government here, arrived in this nation, and, as is well known from our own Historians, divided the Realm into Kingdoms, which they distributed among themselves; they did not, as other Northern Nations, who over ran the Southern Parts of Europe, receive the Theodosian Body of Imperial Laws, as then, either not at all subsisting, or having but just made its Appearance; much less at that time introduced into Britain: nor did they indeed, admit of any other Body of the like Nature, but made Use only of their own Customs, which they brought with them from Germany. And as the Laws among the Goths, and others, who settled in Italy, France and Spain, were, according to their respective nations, called, either Gothic, Langobardic Salic, as well as by other such Names; so likewise among our Anglo Saxons, there was the Law of the Mercians, and of the East

(a) See Note p. 83,
East Saxons; and after that, the Law of the Danes was variously admitted; yet the Roman Law, was never, during that Interval, allowed of here, as it was among those foreign Nations: it being manifest, that no Traces of the Imperial Law, as such, can be found among our Ancestors, during that Time, or for upwards of seven hundred Years in their public Government; though I make no doubt, but that some of our own learned Men in this Nation, as well as the Studious in foreign Parts, were acquainted, at least in Part, with the Imperial Law. And we have all the Reason to believe, that, as far as some Heads or Sentences of the Imperial Law, might have been thrown into the Pontifical Canons, some Use was at that Time made, in Matters of Ecclesiastical Discipline, of the Imperial Law, among us; though it never obtained any Authority at all, in the Administration of our civil Government. But after, first the Anglo Saxons, then the Danes, and lastly the Normans, (all well enough comprehended under one and the same line of Kings) had from the end of the Roman Government here, that is for seven hundred years or upwards, made use, without any Mixture of the Roman or imperial Law, of their own peculiar Laws, now called by us, the common Law of England; though variously, as it must always happen, altered according to the different State of Affairs, at last, to wit, about the same Time, as hath been
been shewn, that the Emperor Lotharius and his immediate Successors, introduced the Use of the Justinian Law into Matters of public Government, both the Theodosian and Justinian Bodies, though seldom, if ever, either entire or in parts, seen publicly here before, were at that time brought into England. And at length the Justinian Body (notwithstanding it was at first, as we shall presently shew, so much disliked among us, as to be prohibited by a public Edict) was, for many Years, made use of by some of our own Lawyers here in forensic Affairs, as it was at that Time by other Nations.

Now with Regard to this Matter, four things are here chiefly to be considered.

The 1st. Is the precise time, when both the Theodosian, and Justinian imperial Laws were, in the Manner we have related, first brought into our Nation, and by whom they were thus introduced.

The 2d. The Admission, Progress, and Use likewise of the Justinian Body in our Universitites and in the Kings Courts, where the Proceedings had been according to the Laws of England.

The 3d. At what Time the antient Use of that Law was laid aside, and reduced to the narrow limits, within which it has for some Ages past been confined and restrained.

And lastly the 4th, How it happened that our Ancestors thus laid it aside or contracted it within such narrow Bounds.

We
Sec. 2. annexed to Fleta.

We shall, in what follows, treat of each of these Heads, as well as of some other Matters connected with them.

S E C T. II.

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

The Proofs, with Regard to the first Point, that is, at what Time the Theodosian and Justinian Laws were brought into England, are plain enough. It appears from William a Monk of Malmesbury, (a) one of the most learned and correct Writers of his Age, that the Theodosian Body was received here, about the time he flourished, by the Learned in their studies. This Author having reduced into an Epitome or Abridgement, as he himself calls it, the Works of Hynmo Floriacenus, (b) concerning the Lives of the Emperors from Justinian

(a) William of Malmesbury. He has made a judicious Collection of whatever he found on Record, from the Arrival of the Saxons to the 8th Year of the Reign of King Stephen, 1142.

Selden's Dissertation

Ch. 7.

nian to Charles the great, and traced the Succession of the Caesars, who reigned after him, down to the death of the Emperor Henry the 5th, the immediate Predecessor of Lotharius the 2d, or to his own times, for he then flourished, to wit, from the Year of our Lord, 1125, or thereabouts, to the Year 1142, at which time he in the Reign of King Stephen dyed) the aforesaid author, I say immediately adds (as is contained in a very antient Manuscript now by me, and which, I'm of opinion, was penned as early as the time of the above William of Malmesbury. Nunc quicquid de Principibus Italici et Roman potissimas invenire, cursovinus non omittere Congruum videtur leges Romanorum apponere Non eas quas Justinianus fecit. Est enim hoc ingenios operis et Laboris. Sed eas quas Theodosius minor filius Archadii a temporibus Cistantii usque sub titulo unius-causis; Imperatoris colletit. Ponuntur ergo 16 Libri ab eo collecti, quorum Sententiae plures explanantur. Quadam Explanacione non egent Divi Theodosii ejusdem Novellarum liber 7. Divi Valentiniani filii Placidiae liber 7. Divi Martiani orientalis liber 7. Divi Antonii et Leonis liber 7. Divi Majoriani liber 7. Having taken Care to omit nothing we could find relating to the Princes of Italy and Rome. We now think proper to add here the Roman Laws, not indeed those enacted by Justinian, for that would be a great and laborious Undertaking, but such only as the Emperor Theodosius the Younger, Son of Arcadias, collected, and that un-
under the Title of each Emperor, from the reign of Constantine, down to his own time. This Emperor then compiled Sixteen Books, several Sentences of which are explained, others require no Exposition. 1 Book of Novells of the same Emperor Theodosius, another of the Emperor Valentinian, Son of Placidia; 1 of Martian Emperor of the East, another of the Emperors Anthony and Leo, and 1 of the Emperor Majorian. But he takes no Notice either of the Gregorian or Hermogenian Codes, some fragments of which are annexed to the printed Theodosian Body._Sed quoniam quaedam sunt in legibus Imperatorum obscura, ad plenum intellectum appositius lisros Institutionum Gaii et Pauli Juris consultorum._ But, says he, inasmuch as some Things are obscure in the Laws of the Emperors, we have towards their being thoroughly understood, added the Institutions of the Lawyers Gaius, and Paulus—and having prefixed the first novel of Theodosius, which—Epistola Theodosii minoris vocat de confirmatione legum antiquarum—he calls the Epistle of Theodosius the Younger, concerning the Confirmation of the antient Laws._He gives us the Books themselves, but they are so imperfect, that sometimes a whole Book has but a single Title, several Titles want many Laws, and we frequently meet with some Books, which have no Titles at all. Moreover the 1st Book in the printed Copies is entirely wanting._The 2d is called the 1st._—and the rest afterwards accordingly. And altho' he
he makes mention of Sixteen Books, yet there are only Fifteen contained in his Works, and these, as we have observed, imperfect — The Institutions notwithstanding of Gaius, and Paulus, as well as the Novells of the succeeding Emperors, are by him, in such a Manner, handed down to us; that several points, very corruptly read in the printed Editions, may, by the Help of his Writings, be, with the greatest Ease, truly restored to their genuine sense. But at the same time, that this Monk of Malmesbury proposes thus to set forth the Theodosian Body of Laws, with the others already mentioned of a like nature; He, as is plain from what we have already quoted from him, evidently speaks of the Justinian Body, as of Laws, not much unknown to himself, and his Countrymen. And it seems to me highly probable that the very same Persons, who brought at that time the Justinian Body into this Nation, introduced also with it, to the End we might have as complete Promptuaries of the Roman Law extant in Latin, as cou’d be procured, that very Theodosian Body, which Malmesburiensis thus made Use of.
S E C T. III.

Concerning the Introduction, about the Year 1140, of the Justinian Body into 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 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 Bec in Normandy.

King Stephen's Edict, with Regard to him, and the Imperial Law, considered.

The Abbey of Bec, was at that Time a renowned Seminary of Learning.

JOANNES SARI S BURIENSIS (a)
Bishop of Chartres, who flourished some-

(a) Sarisbury, born at Salisbury, in the Year 1110.
He was promoted to the Bishoprick of Chartres, in 1179, and dyed three Years after, being esteemed one of the most ingenious polite and learned men of that Age.

Collier,
what after the Monk of Malmsbury, having died in the Year of our Lord 1182, or in the Reign of Henry the 2d, furnishes us with a most express Testimony, that the Justinian, called the Roman or Italian Body of Laws, under which Name the Theodosian was also included, were, in the Time of King Stephen, who began his reign in the year of our Lord 1136, and dyed in 1154, publicly brought hither; which coincides with the time that the Emperor Lotharius founded public Lectures of them in Bononia, and spread them in some Measure, by his own example, throughout the western Parts of Europe. Here follow the words of Sarisbariensis*—Alius dixi, qui libros legis deputant igitur, nec secundum verentes, si in manuscriptorum juris peroscentes, aut Canones. Tempore regis Stephani, a regno justae sunt leges Romanae quas in Britanniam, Domus venerabilis, atris Theobaldi Britanniarum Primatis, affererat. Ne quis etiam Libros retineret Edicto regio prohibitum est, et Vacario nostro indicetum Silentiem; sed deo faciente, co magis virtutis legis invaluit quo eam amplius nitebatur impietas infirmare. I have seen some, who, if either the Laws or the canons fall into their Hands, make no scruple of condemning them to the Flames, and tearing them in Pieces. The Imperial Laws, brought hither in the reign of King Stephen by the Household of the venerable Father Theobald, Primate of Britain, were prohibited in this Kingdom. It was also by a royal Edict decreed, that
none should so much as keep by them the aforesaid Books, and Silence was enjoyed our Vacarius; but proportionably as impiety strove to invalidate the Law, its Power, by God's Blessing, gradually prevailed. This same Theobold, who, as it is said, was the first Archbishop of Canterbury honoured with the title of Legatus natus, which Pope Innocent the 2d conferred on him, and which dignity was from that time transmitted to his successors, was, in the year of our Lord 1139, about three Years before the Death of the Monk of Malmesbury, consecrated Prelate of Canterbury. He was, from being Abbot of Bec, made Archbishop of that See, and went for his Pallium to Rome, at which Place he sometimes, as well as at Rheims, assisted at Synods. What is here said of his Household having brought the Roman Laws into Britain, seems to be understood of the Attendants, who accompanied him backward and forward in his journeys. They being unwilling that England should be destitute of those Laws, which at that time were in so great repute abroad, on that account took care to have Copies of them, brought over hither; and this, Sarisburienfis tells us, displeased the King to that Degree, that he prohibited the reading them by a public edict; of which Matter we shall presently treat more fully. But what is meant by these words.—*Et Vacario nostro indicium Silentium.—And Silence was enjoyed our Vacarius—for it must, tis...
plain, be so read.——The just mentioned words occur in the antient Editions of the Polericatum, one of them published by Constantinus Fradinus the other by Bertoldus Remboltus, both dated the same Year and Month, to wit, in May 1513; tis read in the Edition of Remboltus.—Et vicario nostro, &c. In that of Fradinus——Et Vacario.—But there are three other Editions extant, two of them printed at Leyden, * the 3d contained in the Books called Bibliotheca Patrum,§ or the Library of the Fathers in which the words——Et Vacario—are rightly retained, notwithstanding al. Vacario's being added in the Margin, hereby infinuating that the reading was, in this Place, very doubtful, and that the Name was perhaps here to be understood of some Vicar of Theobald's, who read the Roman or Imperial Laws, and had been for that reason silenced: but 'tis evident that the Name Vacarius is, in this Passage, to be preferred, and that Master Roger Vacarius, called also Wacarius, a Native of Lombardy is thereby meant, who Lethardus, the 6th Abbot of Bec, or of the Monastery of St. Mary le Bec Heloïne within the Diocess of Rouen in Normandy, subject at that time as well as long afterwards to England, and the immediate Successor of Theobald being dead) was chosen into his Place, and read in the Reign of King Stephen, consequently in the time of Theobald, by whom doubtles he was much valued, the Imperial Laws, out of the Justinian Body, to a great Number of Pupils in England. For thus, the
Sec. 3. annexed to Fleta.

Author * of the late Edition of the Chronicles of Normandy, from the Year of our Lord 1139, to the year 1238, published from the Manuscript in the Library of the Abbey of St. Victor, at Paris, expressly tells us under the Year 1148; but the Matter relates to the following Year or 1149, for says he, Obiit Bechardus VI Abbas Becci cui succedet Rogerius Magister Wacarius gente Longobardus, vir beneficus et juris praeitus, cum leges Romanas anno ab incarnatione Domini MCXLIX, in Anglia discipulis: decret et multa tum divites quam pauperes ad cum causa disceendi confluent. Bechardus (plainly to be read Letbardus) the 6th Abbot of Bec, dyed; who was succeeded by Master Roger Wacarius, a native of Lombardy, a worthy Man, and learned in the Law, whilst in the Year of our Lord 1149 he was teaching the Roman Laws in England, and many both rich and poor, were flocking to him for the benefit of Learning——

Tis in the Margin, by an unhappy and idle Conjecture, marked there.—forte Baccalarius—but tis from what has been quoted out of Sarisburiensis, fully confirmed, that it ought to be read Wacarius, or Vacarius; and he not only taught publicly; but at the Request of the Poorer sort, whose Purses could not enable them conveniently to purchase the Justinian Body, as well as at the Desire of those, who were better pleased with a Compendium of the Law, abridged the Pandects, and Code (as
Raimundus afterwards composed his epitome of the Canon Law, for the Use likewise, as he himself tells us, of the Poor) into nine Books, which might serve the studious instead of the most costly Promptuary of the Law. — The just above-mentioned author, says the same thing concerning him, for immediately after what has been cited, he has these words — *Suggestione Pauperum, de Codice et Digesto exceptis IX. libros composuit qui sufficient ad omnes legum libres que in scholis frequentari solent decisiones, si quis esse perfecte noverit.* — He, at the request of the poor, compiled out of the Code and Digest nine Books, which are sufficient to enable one, who will make himself a perfect Master of them, to decide all Law debates, usually handled in the schools. Roger Vacarius at that Time publicly taught the Justinian Law here under King Stephen; in the 14th year of whose Reign, to wit, in the Year of our Lord 1149. He succeeded Lethardus, Abbot of Bec; and it appears plain, from its being expressly laid in the above mentioned Chronicles, that he succeeded Lethardus Abbot of Bec, *cum doceret hic* — at the very time of his teaching here, and when many both Rich and Poor, were on that Account flocking to him, that he had thus for some Years before taught the Justinian Law. And tis highly probable that he also composed his Books here before he was made Abbot, that is whilst he was Prior of Bec; for it appears from a Manuscript
Sec. 3. annexed to Fleta.

script of Robert de Torrinoio, (b) who was likewise Abbot of Bec, that he had been first a prior of that Abbey. And this not indeed easily proved from the aforesaid Robert, that Vacarius, after his having been made Abbot of Bec, taught in this Nation. In the Year of our Lord 1149, says he, Csit sancta recordationis dominus Letardus F. I. Abbas Beccenjis Ecclesie: vixit nono cursi virgo Senex finivit VI nonas Iulii, sabbato, infra Octavas Apostolorum Petri et Pauli. Dyed Letardus, of blessed Memory, 6th Lord Abbot of the Abbey of Bec: This same shaft old Man, finished the Course of his Life on the Lord's Day, being the 6th of the Nones of July, within the Octave of the Apostles Peter and Paul—which Festival falls on the 29th of June, wherefore he departed this Life, on the 2d Day of July. The same Abbot says a little after. Huic sancto viro succedit Dominus Rogerius Prior secundus in utroque fessameto apprimo eruditus, nec non clericali et seculari scientia decenter ornatus et ab omni communiter congregatione electus in ipsis octavis videlicet Apostolorum Petri et Pauli qui benedicimus apud Sanctum Wandregisilum in die festivitatis sancti Iacobi Apostoli a venerabili

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(b) Robert de Torrinoio, who was likewise Abbot of Bec.

Du Moultier, who in his Nvtria pia has given an Account of all the Abbots of Bec, does not rank him among them; but he had been Prior claustral of that Abby, and was afterwards made Abbot of Mount St. Mabel, in Normandy. Da Moultier's Nvtria pia. P. 388. See Note Robert Montenier, p. 156.
hili Hugone, Rotbamagensi Archiepiscopo, ab eodem coram Conventu Becensis in Sede sua collocatus est, ex tunc super gregem sibi commissam pro posse sua die ac nocte decenter invigilans. Master Roger, the second Prior (Lanfranc, afterwards Archbishop of Canterbury, having been the first) succeeded this Holy Man—Rogerius was thoroughly learned in the Old and New Testament, and competently adorned both with ecclesiastical and civil Learning, and being unanimously elected by the whole Congregation on the aforesaid Oltav, to Wit, of the Apostles Peter and Paul (that is on Wednesday the 6th day of July) he received the Abbatian Benediction in the Church of St. Waudregiilus on the Festival of St. James the Apostle (or on the 25th Day of July) from the venerable Hugh Archbishop of Rouen, and was by the same Archbishop installed in the Presence of the Abby of Bec. He from that Time watched in the most prudent manner, to the utmost of his power, Day and Night, over those committed to his Charge. Now Roger was in England, where he read Lectures on the Law, at the Time of his being elected by the Monks of Bec; from England he went into Normandy, where he was consecrated Abbot. And as he is said—
die ac nocte extune supor gregem sium decen-
ter invigilasse—to have been from that
time, in the most becoming Manner, both
Day and Night vigilant over his Flock—it
seems from thence plainly to follow, that he
did not quit the sacred Duties annexed to
his Office, to read in foreign parts Lectures on the Civil Law. But that he publicly taught it here before, as we have said, for some Years after the Justinian Law had been introduced into this Nation, must be owned sufficiently manifest. And it is to be observed, that, in those Ages, all Kind of Learning flourished in a very eminent Degree in the Abbey of Bec, which occasioned this same Roger, to be at last so distinguished among the learned. The said Robert de Torrincio tells us also, Mortauns est etiam loc anno Vir religiosus et Magnae litterature Ivo Carnotenis Episcopus. Hic dum esset Juvenis audivit Lanfrancum Priorum Becci de secularibus et divinis literis tractatantem, in illa famosa scholo quam Becci tenuit, in qua multi et nobilitate seculari et beneitate morum convenerunt; viri prrediti, et qui postea ad summum opem ecclesiasticæ dignitatis attigerunt—That in the Year of our Lord 1117 dyed, Ivo bishop of Chartre, a religious and very learned man, who in his younger Days studied human and divine Learning under Lanfranc, prior of Bec, in his celebrated school of that Abby, to which the aforesaid persons who afterwards attained to the highest Dignities in the church, together with many of the laity of great Rank and Probity resorted.—And even whilst this our Roger governed the Abby of Bec, duodecim Abbates ad regimen ecclesiæ inde assumpti sunt*—twelve R. de, Mon- tenis in Append ad Sigibert. An. 1180. Monks of the same Abby, were made Ab- bots over other Monasteries. And a great many were from that Abby, it having been
been ever a most fruitful seminary, advanced to the Government of sacred affairs in England.—This Roger Vacarius was Abbot of Bec thirty Years or thereabouts, and dyed in the year of our Lord 1180, or about the latter end of the Reign of King Henry the 2d, having all along, with the greatest Honour, acquitted himself of the duties of that dignity.—Nullus Predecessorum suorum excepto Sanêto Herluino primo Abbate tanta fecit in Becco Monasterio quanta Ipse. None of his Predecessors, says Robert (c) Montensis (who enumerates the good services he had done for the Abbey) except St. Heluin, its first Abbot, did so great Things in the Abbey of Bec. Vacarius was succeeded in his Dignity by Osborn Prior of Beaumont, a Monk of the Abbey.—But whether this Roger was at any time a professor or Reader of the Law, either at Oxford, Cambridge, London, or in the Palace of Theobald Archbishop of Canterbury, or in any other secular or regular Schools of this Nation; or whether he taught in any fixed Place, tho' this last seems most probable, does not appear.

S E C T.

(c) Robert Montensis., called so from his being Abbot of Mount St. Michael in Normandy. His Name was Robert de Torignys, and was from being Prior Contra of the Abbey of Bec, elected Abbot of Mount St. Michael July 22 1154. He wrote a Chronicle of the Abbey of Bec.

Du Monstre's Neuftrie. 388.

See Note c. 7 f. 3. Robert de Toriniea.
S E C T. IV.

Our Annals and Histories, make no Mention of that Matter. What Notice is taken of this Roger Vacarius, the first Professor of 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.

But I could hitherto, neither in our Histories or Annals, find any mention of the Time the Imperial Laws were thus brought among us, or of Roger Vacarius's having been Professor of the Law in this Nation. Ranulph Higden, (a) tis certain, in that Part of the Preface to his Polychronicon,

(a) Ranulph Higden, a Monk of St. Werburgis, in Chester, where he dyed very aged, in 1377. Roger.
nicon, where he Names the Historians as well as the other writers from whom he compiled his Work, not only takes particular Notice of Joanes Sarisburiensis, but also of that Author's Book called Polericaticum, which contains, as has been before shewn, a most express and weighty Testimony, as well of the Imperial Laws being brought hither, as of this same Roger Vacarius. But the aforesaid Ranulph wholly passeth by that Matter in Silenee, of more Importance, with regard to the History of England, than any thing else treated of in that work. This Roger however is by other Authors plainly enought taken Notice of, it being evident, that this 7th Abbot of Bec, was, while Prior of that Abby, the first, who, after the Revival of the Imperial Law in the West as before set forth, publicly taught it in England; as Placentinus was, some Years after, the first, who began to promote the Profession of the same Law, at Montpelier in France. This was the very Rogerius, who is, by some Writers, and in some Editions, recorded by the Name of Veteris Glossatoris—the antient Glossator, sometimes also, by that of—Summae Juri prima, Paratitlorum prumi Authoris—the first Author of the first Sum of the law and of the Paratitles—as well as by the Title of—antiquae ac immortalis Memoriae Doctoris—a Doctor of antient and immortal Memory. Wolfgangus Freymonius sets him down as the chief of the Civilians who, flourisht'd between the 12th and 13th Centuries, but tis very evident, from what has been
has been already said, that he dyed twenty Years before the 12th Century; and that he was cotemporary with Irnerius, Martinus, Bulgarus Jacobus, Bandinus, Hugolinus, Fyleus, Otto, Placentinus, and all the other restorers of the Imperial Law in the West; that is down to the Reigns of the Emperor Frederic Barborossa, or of our Kings Stephen and Henry the 2d, or about the Middle of the 12th Century, and for some few Years longer. Catellianus Cotta,* says that—Rogerius Odofredi beneventani Paeceptor, qui primus paratitla conscriptit, id est rerum summam titulatim appositam quod a Justiniano permissum fuerat. Roger, who first wrote the Paratitles, that is a Summary of the Matter drawn up under the respective titles, which had been allowed of by Justinian,† was Paeceptor to Odofredus of Beneventum. —but, in point of Chronology, it can scarce at all be believed, that our Roger Vacarius could have been Tutor to Odofredus, this last having lived till the Year of our Lord 1265, || whereas it is certain, that Roger dyed, in the Year 1180, consequently eighty-five Years before the Death of Odofredus. And Odofredus himself a thousand times acknowledges another Person for his Paeceptor or Master, to wit: Jacobus Baldewinus (from whom nevertheless he often differs) but he no where, that I remember, mentions Rogerius, whom he sometimes, though not often, cites, in that capacity. Odofredus very frequently speaks of the sums of Johannes and Azo, and now and then of Placentinus's. As for our Rogerius, he ranks him among the an-
tients, for he often calls those, who wrote before Aso and Joannes, antients, as he likewise ftiles the Authors, who wrote after them. Moderns On the Law——Eam quam C. tit de Fidei commiffis.—Ro. some-
times occurs in his Works for our Roger, and he elsewhere observes,* that—In ilis tribus quaftionibus fuit opinio domini Mar. Pla. Rog. et Fregerii et Domini Alberici an-
tiqui Doctoris.—with Regard to those three Questions, the Opinion of Master Mar (Mar-
tinus) Pla. (Placentinus) Rog. (Rogerius) and of Fregerius, and Master Albericus, an antient Doctor, was fuch. But I am
strongly inclined to believe, that it ought to be read Fregerii, and that no other Person is meant by this Name, than Rogerius, and that Fregerius, as somewhat synonymous to Rogerius, was likewise called Fregerius, as he is expressly named so by Placentinus.§ And Odofredus himself designs him else-
where under that Appellation. That Au-
thor speaking of what may be done, with Regard to a present, or future Law Suit, says—Eſtne iſtud verum fce moveratur hui
just ſtue iſtue jeſte? Dixerunt quidam quod ſic
Et pro eis videtur facere C. c. 11. Dominus
Fregerius in articulo illo contradixit. Et ita invenietis scriptum in Summa fiau quam fe-
cit super C. et fuit prima Summa quæcumque fuerit faet. Et tenet forte per XX cartas.
Post eum fecit Dominus Placentinus fiam. Post eum dominus Joannes Bafianus fecit fiam
quæ incipit Quicincq; vult. Et eſt nulla; et postea Dominus Azo fecit optimam Summan
qua bodie utimur. † Is that true, whether
the Suit be commenced justly or unjustly? Some are of opinion it is. And the Code.
e. 11, seems to make for them. Master Frogerius is, in that Point of a contrary Opinion, and so you will find by the Sum he made upon the Code, which was the first Sum ever publish'd, containing about twenty Sheets. Next Master Placentinus wrote his Sum, after him, Master Joannes Bosanus finished his, which begins with Quilocum; vult, and is in no esteem. Then Master Azo gave us that excellent Sum, which we now make Use of—Thus far Odofredus.—Rogerius therefore was the first Summulist, as Irnerius was the first Glossator. And Antonius Augustinus, * if I am not mistaken, attributes the Sum of the Canon Law to the same Rogerius, who also by Fulvius Mariotellus * is expressly ranked among the few eminent interpreters of the Pandects, as well as he is by the antient Summulists by Justinus Gblerus.—His Name, tho' but very seldom mentioned by the Biographers of the Lives of the Lawyers, or elsewhere, is yet now and then met with in Commentators, where after the antient Manner of reading Abbreviations, we meet with Roger, that is this same Roger the Lawyer. But Guido Pausirolus * treats more largely and more expressly than any others concerning this Author—Martini et Bulgar-i etate clarescere Rogerius capiit qui primus in eam Pandectarum partem quam Infortia-tum vocant glossas emisit. * Cum enim pu-blico stipendio non nisi Digestum vetus et Cod-i-cem antiqui Professoris interpretari teneren-
tur, reliqua Legum partes negligentius tractabant, nec nisi privatum soluta stipe explica-

bant, et ob id extraordinarias eas lectiones vocabant. Sed Rogerius, ne haec quoque le-

gum pars obscara permaneret, in eam suas lucubrationes edidit. Primus etiam Juris

compendium (quod summam vocant) viginti Chartarum numerum non excedens composit.

Hunc amulatus Placentinus etiam longe lu-
culentiorem summam emisit; tertiam sed ina-
nem Joannes (Basantus scilicet Azonis præcep-
tor Cremonensis) fecit, Postremo vero ca-

tris lompletiore condita omnes ante se Azo su-

peravit. Rogerium alii corrupte Frigerium

(lego Prigerium) nonnulli etiam Fridericum

nominant. Idem de diversis præscriptioni-

bus forma Dialogi scripsit, in quo se cum

Juris prudentia loquentem inducit, nulla ejus

mortis ante Sepulchri Memoria habetur.—

Rogerius, he tells us, who first published
glosses upon that part of the Pandects, called

Inforiatum, (that is the 24th and the

following Books to the End of the 38th,
those, which go before, being usually called
by the Name of the old, the subsequent
ones by that of the new Digest) began to
flourish in the time of Martinus et Bul-
garus. For whereas former Professors,
not being obliged by the public Salary
they received to interpret any other Laws,
than those contained in the old digest and
Code, handled the other Parts of the Law
in a careless Manner; nor would explain
them except in their private Expositions, and
which from their being paid for, were called
Extraordinary Lectures; our Rogerius, that
Sec. 4. annexed to Fleta,
even this Part of the Laws might not remain obscure, published his Illusrations upon it. He was also the first, who composed a Compendium of the law (commonly in that Age called a sum) not containing above twenty sheets. Placentinus striving to outdo him, published another much more extensive sum. Joannes, to wit, Basianus of Cremona, Preceptor to Azo, made a third, which was but little regarded. But lastly Azo, having wrote one much more complete than the former sums excelled all the Authors of this kind before his Time. Some corruptly call this Rogerius, Frigerius, (read Frigerius) others also Fridericus. The same Writer published a Book in the Form of a Dialogue, concerning various Presections, in which he personates one, reasoning with Jurisprudentia. ______ There is no Account extant, either of the Time of his Death or Place of burial. ______ Thus far Pancirolius concerning our Rogerius. But we have before shewn when he died. The Dialogue he mentions concerning Presections, is contained in the 17th Tome of the Treatises of eminent Lawyers, among which also there is another small Treatise of his on the same subject, under this title, Rogerii antiqui Glossatoris de diversis Prescriptions.—A Tract of Rogerius the ancient Glossator, concerning various Presections.—These two small Books are likewise printed * with the Works of Azo, Dinus, and some other Authors, treating upon Presections, in which he is filed Antiquus et immortalis
memorise Doctor Rogerius. — Rogerius the antient Doctor of immortal memory. The printed Book of Rogerius the Lawyer, who is the same with our Master Vacarius, is briefly mentioned by Gesner in his Library. — This therefore was the very Person, to whom, as Joannes Sarisburiensis tells us, Silence was enjoined, to wit, that he should no longer read here, as he had begun to do, public Lectures on the Imperial Law. — Now this Prohibition was issued out by King Stephen, about the fourteenth Year of his reign, which answers to the Year of Christ 1149, at which Time, it is plain, from what has been already proved, that he both publickly read and taught in England. And as Irnerius was the first Expounder at Bononia, or in Italy, of the Imperial Law, revived in the West; so Roger Vacarius was the first Expositor of it in England, as Placentinus likewise was at Montpelier in France, to wit, sixteen years, or thereabouts, after the Death of our Rogerius, that is, about the Year of our Lord 1166, at which time — Rogerii nominis abolendi * cupidus cique tenebras se offusurum jactans — He being ambitious of abolishing the Name of Rogerius, and boasting that he would involve him in perpetual obscurity, began to write at Montpelier. 'Tis certain, as hath been said, that Placentinus composed a Sum of the Code, which till the Publication of Azo's, was in greater esteem among the learned than any other: Rogerius's Sum, which I believe is not now any where to be found.
found, being at last laid aside. * Placentinus was also the Author of the three last Books of the Sum attributed to * Azo; and Placentinus, who certainly greatly envied the glory of ** Rogerius, hints that his Sum was to be looked upon rather as an Essay, than as a finished work. One Magister Vacarius is likewise mentioned in a Rescript * of Pope Alexander the third, concerning a Marriage in the Diocese of York, and this Rescript is directed to him, and the Abbot of Fountain, and plainly coincides with the Time of Rogerius; but he, as hath been shewn, was made Abbot of Bec many Years before the aforesaid Alexander was Pope, wherefore 'tis scarce credible, that that Pope would have then called him simply by the Name of Master Vacarius, and not have given to him, as well as he did to the other Abbot, the Title of his Dignity. Perhaps, that Master Vacarius succeeded Rogerius, as Profeffor here of the Imperial Law. Glosses on Interpretations on some Books of the Cannon Law also, as on the Sum of Bernardus Compostellanus, are attributed, as it seems, to this our Rogerius; † but this is a manifest Error, occasioned by not knowing the time of his Death, he having departed this Life, as hath been shewn, long before, or in the Year of our Lord 1180. The singular Regard, and high Esteem also which was shewn to this eminent Person, may be learned both from his having been preferably to other Candidates of great Note, not only elected at Lambeth, 

M 2
by Odo the Prior, and his Monastery, but likewise from his Election having been, with the Consent of the Suffragans of Canterbury, confirmed by King Henry the 2d; as well as that he could by no Means be prevailed on to take upon him that important Charge, though he was most earnestly entreated to accept of it. Gervase of Canterbury in his Chronicle, || mentions the Names of three Persons who were proposed as Candidates, (this also being required by the Imperial Law,) ¶ of whom this Roger was one. And then says he, Prior cum qui busidani monachis affuit, et tandem Abbatem Beccensem solenuiter legit, sentientibus utique Episcopos (sicelcit Richardus de Luci) summus tunc Anglica jussiciarius, ut de Elezione bae consulenter, Landinum Episcopos Anglica congregarat) et assensu regio elezione confirmata, singuli ad sua recefs e- runt. Et Prior Cantuarienfs rediens ut suum electum adduceret in proximo transfertavit. Sed |pe sua fraudatus est, quia praedictus electus nullius infantia induci potuit ad consentiendum. Institit autem Prior acrius per Regem et Legatos (Pontificis Romanus; Albertum et Theodinum) qui abhuc erant cum Rege in Normannia cum electo infere gessiens ut consentiret. Sed frustra. Nam cum inflarent Rex et Legati simul cum Priorc nec praevallert, apud Sanctam Barbaram (in Episcopatu Lexovienfis) in Cena.

(a) Gervase of Canterbury. He wrote a Chronicle of the Reigns of Stephen, Henry the 2d. and Richard the 1st. — Rapin.
Caena Domini ab Electione est absolutus.

The Prior being assembled with some of his Monks, Roger, Abbot of Bec, was at last solemnly elected, the Bishops (whom Richard de Luci, then high Justiciar of England had convened together at London, to consult about this Election) howsoever (a) consenting, and the Election being by the Royal Assent confirmed, each returned to their respective Residences. The Prior of Canterbury, the Day after the Election, crossed the Sea, in order to accompany thither the Archbishop elect, but was disappointed in his Expectation; for Vacarius could by no Means be prevailed on to consent to such Election. The Prior however the more strenuously insisted that he should accept of the Dignity, flattering himself that by making Use both of the King's Authority, and of the Power of Albertus and Theodinus, the Pope's Legates, at that Time with the King in Normandy, he should be able to induce him to consent to his Election. But all was to no Purpose; for Rogerius, after that the King, Legates, and Prior, had jointly without Success pressed him to it, was absolved from his Election in the Church of St. Barbara (in the Diocese of Lefieux) on Maundy

(a) Howsoever consenting. The Prior and Monks of Canterbury had strenuously insisted on (what they called) a free Election, exclusive of the Bishops of the Province; but at last they pitched upon three unexceptionable Persons, whom they recommended to Richard de Luci, in order to the admission of some one of them, by the Bishops and King's Approbation. Cari's Hifi. Eng. c. 1. p. 654.
Maunday Thursday. Florilegus (a) likewise tells us, that Anno M.C.L.XXIII. Rogerius Abbas Beccensiis Electus est in Archidioecetum Cantuarianensem. Sed Abbas nimis Religionis penitus contradixit—Roger Abbot of Bec was, in the Year of our Lord 1173, elected Arch Bishop of Canterbury, but the Abbot, being over scrupulous, wholly refused that Dignity.—Rob. (b) Montensis says this of him.—Ille vero pretendens infirmitatem suam noluit acquiri: e relectioni eorum—but he excepted himself from acquiring in their Election, on Account of his Infirmity.—Ralph (b) de Diceo (c) likewise informs us, that VI. Non. martii subj.: aganci Cantuariensis Ecclesiae ut de Archidioecetum electione tradarent sub edicolon vocati venerunt Lamebedam; et quoniam Lanfrancus, Anselmus, Theobaldus in ea sede tam lite, iudicaverant, idem fortunae loci quodam modo deputantes, in Rogerium Beccensiis Abbatem, (nam trini illi etiam fuerant Beccensiis) sed non unanimiter saltam voce tenus concorditer convenuerunt. Orta est tunc primam Controversia, quis electionem pronuntiaret in publico. Suffraganeis hoc adjus Episcopi Londoniensis ab antiquo pertinuentibus Cantuariisibus et contrario Monachis afferentibus Priorum saum hac in re potius praefuerant. Pro bono

(a) Florilegus, filed so from his being a choice Collector of the Flowers of former Historians, but more commonly known by the Name of Matthew of Westminster. He ended his History at the Year 1307. Rapin.

(b) Ralph de Diceo Dean of St. Pauls in London. He wrote about the Year 1210. His Abbreviationis Chronicorum, contains an Abstract of our History down to the Conquest; and his Imagines Historiarum, gives the Portraiture of some of our Kings more at length, ending with the first Years of King Joho's Reign. Rapin.
itaque Pacis, ne quid in absentia Regis orietur discidii, salvo jure partium, Ricardus Pictaviensis Archidiaconus in omnium § adjutorio recitavit. Abbæ electus hoc intelligentia in Normannia coram Rege in praesentia Cardinalium Alberti et Theodori, electionis factae hic est. Diximus, penitus contradixit. Hoc cum fecissent religionis obtemuerant suspicabantur nonnulli. Ab aliis dicebatur quod Spiritus pufilanimate contraeius se imparem oneri tantò protegat sit. —— The Suffragans of the archiepiscopal See of Canterbury, pursuant to an Edict issued out to convene them together, assembled at Lambeth on the 6th of the Nones of March, in the Year of our Lord 1173, to consult about the Election of an Arch Bishop for that See. And Lanfranc, Anselm, and Theobald, having been highly eminent in this See, which Event the Suffragans in some measure attributing to the good Fortune of the Abby of Bec, they agreed to choose Roger the then Abbot there, (the three before mentioned prelates having been likewise Abbots of the same Place) and whether the Electors were heartily unanimous or not; they all however consented to give him their Votes. It was then that a Dispute, for the first Time, arose concerning the Person who should publicly declare the aforesaid Election. The Suffragans affirming that this Privilege antiently appertained to the Bishop of London (who by our antient Law was Dean to the Arch Bishop of Canterbury in his College of Bishops, or Body of Suffragans, as Winchester was
was his Chancellor, *Lincoln* his Vice Chancellor, *Salisbury* his Preceptor, *Worcester* his Chaplain, *Roche* his Cross-bearer,) *the Monks of Canterbury* on the contrary asserting, that the Preference in that Point was due to their Prior; wherefore for Peace Sake; and to prevent any troubles arising, during the King's Absence, the Right of all Parties being saved, *Richard Arch-deacon of Poitiers*, in the public Auditory, declared his Election. The Abbot thus elected, being made acquainted with it in *Normandy*, entirely, as we have said, declined before the King, in the Presence of the Cardinals *Albertus* and *Theodonus*, such his Election. — Some think, that he did this out of a Pretence of Piety; others were of Opinion, that he declared himself unfit, by Reason of his Pusillanimity, for so great a Burthen. Others again, as *Roger Wendenover* (b) and *Matthew Paris* (c) that *Electioni falsæ penitus contradixit, utrum pusillanimitatis intuitu an Religionis incertum est.*— He wholly declined his Election, but whether

(b) *Roger de Wendenover*. The former Part of the History which goes under the Name of *Matthew Paris*, to the Year 1235, is supposed to have been written by this *Roger Wendenover* who was *Prior de Beaulvoir*: *Blackton's Introduction* to his History of *Mog, Chart. p. 5*. *Rapin*. So Ed. V. 3, P. 531.

(c) *Matthew Paris*, a Monk of *St. Albans*, one of the most renowned Historians of this Kingdom. *His Historia Major* contains the Annals at large of eight of our Kings from *William the Conqueror* to *Henry the 3d*. *Rapin*. 
ther thro' a Consciousness of Pufillanimity, or out of a motive of Religion, is uncertain. But he is, in the printed Editions of the Works of these Authors, as well as by the Biographers of the Arch Bishops, corruptly called Robert.

S E C T. V.

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

We shall now give our Opinion why and how it happened, that the Name of Vacarius was given to either of the aforesaid Persons; for 'tis plain, Vacarius, and not as 'tis in the aforesaid Chronicles, Wacarius, much less Vicarius, as Sarisburien-fis has it, is the true Reading. For he certainly could not, with any Propriety, have been well called Rogerius Magister Vacarius—Roger Master Vacarius—but either, Rogerius Vacarius Magister—Roger Vacarius the Master, or—Magister Rogerius Vacarius, Master Roger Vacarius—had that been the Surname of his Family, or substituted in its Place; but such Forms of Speech were, I own, in those Ages, as they are but too much now, in the highest Degree ambiguous. And for my Part, I'm of Opinion, that the Name Vacarius, ought both
both there, and in the Rescript of Pope Alexander the 3d. to the Abbot of Fountains, and one M. Vacarius to stand for an appellative Name, by which the peculiar office he had taken upon him to set a part a Time, namely a Vacation, both for his Lectures on, and for his public Teaching of the Law, might be signified; by which Name others also were perhaps in that Age called. As it was common with the Antients to make Use of Armis, Choreis, Philosophia, Pastorationibus vacare, to signify their employing themselves with more Earnestness to those things than any other: so lectioni vacare et professioni—to set aside a Vacation, in order to exhibit Lectures on, or profess any Science, was, in the Age we now speak of, the usual Language. Joannes Januensis in his Catholicon says; Vaco, esse vel fieri vacuum. Et licet videtur ad alias significationes transferri tamen omnes redolent illam. Dicitur etiam vaco lectioni et operam do. Et vaco a lectione id est de- deficio a lectione. Vaco nummis id est carco. Sed istae omnes significationes redolent primam. Cum vero dico, vaco lectioni idem est ac si diceretur vaco ab aliis rebus et insisto lectioni, unde vacat impenonale, id est esse vacuum, vel licitum esse vel opportunum. Unde vacat mihi legere, opportunitatem legendi habeo et non impeditor ab alio negatio.— That vaco signifies to be, or to become vacant, or void, and though it seems to be applied to other Significations, yet all of them retain some Tincture of this their original
original. 'Tis also said, I set a Time apart and apply myself to Reading, that is, I make a Vacation for that Purpose, and I desist, or have a Vacation from Reading, which is the same as to say, I have laid reading aside. I am vacuated of Money, that is, I want Money. But all these Significations have some Relation to their primitive one. But when I say, I set a Part, a time, or make a Vacation in order to read, tis the same as if I had said, I vacuate or free myself from all other Business, and apply myself to reading, whence the impersonal Verb vacat signifiys to be disengaged from any thing, that is, to be free, or at Liberty, or that it is lawful and proper to apply oneself to any Affair; whence to have a Vacation or time to read, means that one has leisure to read, and is not hindered by any other Business. Hugh Pissen,* in his Work concerning the derivation of Words, uses almost the same terms.—Certainly as from aquari, arbitrari, parare (in the sense that parare et comparare, stand for § inter se convenire) the words aquarius, arbitrarius, pararius, and other such like, are by the Antients, according to the same rule, justly applied to signify different things, bearing some Proportion to the Primitive Words; so perhaps the daring Barbarism of the Moderns, not without being grounded on the Examples and Analogy of the Antients, formed according to the Sense we have mentioned. Vacarius a vaco, thereby particularly distinguishing him, who, above all others,
diligently applied himself to, or set a time or Vacation a Part, for making Lectures, as undoubtedly our Rogerius did. Certainly Vacarius, may thus with less impropriety be derived from Vaco, than Accursius from Accurro. Now even Accursius himself, by every one stiled the idol of the Lawyers, on the Words of Caius upon the Law, concerning the Conditions of an Heir's taking upon him the name of another, which must be understood to extend only to reputable, not to infamous or base names, says thus, Instituo te hæredem si imponas tibi nomen meum sœlicit Accursium, quod est boneum nomen dicit quia accurrit et succurrur contra tenebras juris civilis. Secus si dixi si imponas tibi nomen Vespillo quod est turpe nomen. I appoint you my Heir, on condition you take upon you my Name, to wit, Accursius, which is allowed to be a Name free from any Imputation of Infamy, because he that bears it, is affidious to prevent, and remedy the darkness hanging over the civil Law; on the contrary should I say, if you consent to take upon you the Name of Vespolio; that being an infamous Name. And it is not much to be wondered at, that in those Ages, such Compositions or Derivations of Names were frequent, since we even meet with authors, who doubt whether Justinian himself was so called from Justice, or from his having been the Son of Justin, whose Nephew indeed he was by the sister's side, his Son only by Adoption. And they, in order to confirm
Sec. 5. annexed to FLETA.

confirm such trifling conceits, apply the following words of Justinian §—consequentia nomina rebus esse studentes.—We endeavouring that Names shall flow from the Things themselves—whence also they tell us, tho' very ridiculously, that he was called Flavus (instead of Flavius) quia talis erat coloris. From his being of a Yellow Complexion. But indeed in the printed Novells † of Theodosius, almost the same Word as Vacarius, to wit, Vecarius occurs. Et apud illustriissimos Praefeturas, so tis there, et apud Vecariis Rectores Provinciarum de quolibet negotio pulsari, &c. But this, besides many more of the like nature in the aforesaid printed Copies, is a most gross Error. It ought, instead of Vecariis, to be read Viro: Clarissimos, (or Vi. Clariss. whence Vecariis is in that Place, without any Ground, formed) Restors, &c. This is evident from the above cited Manuscripts of the Miscellaneous Law Collections of William of Malmsbury, now in my Possession.
S E C T. VI.

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.

It is not very surprizing, that King Stephen should at that time by an Edict prohibit both the Use of the Roman Laws, and of the Books, wherein they were contained; brought, in the Manner we have related, into England by the Domestics or Attendants of Theobald Archbishop of Canterbury, and doubtless under his Protection; since the King was then in the highest Degree iraged against him and had proscribed him for going, without his Leave, to the Council of Rheims; (b) though the Arch-

(b) Rheims. This general Council was called by Pope Eugenius the 3d, in the Year 1148, and the Bishop of Winchester, craftily contrived that Theobald should be summoned to it, in order that he might incur the Displeasure, either of the Pope or King Stephen.

Archbishop was not behind hand with the King, for he in his turn had taken upon him to interdict the Kingdom. And it can scarce be doubted, but that Henry, then Bishop of Winchester, who was in the highest Favour with the King, and always endeavoured, with his utmost Might, to oppose (b) Theobald in his Designs, heartily joined the King in this Affair, to wit, That the Public Lectures of the Imperial Law, and the Books of Justinian, of which Theobald’s Household, were the first Promoters here, and from thence began to make a considerable Figure, might be discountenanced, and the Use of them prohibited. Roger Bacon, (c) that most celebrated Philosopher and Mathematician of the Franciscan Order, who wrote under Edward the First, mentions likewise

(b) To oppose Theobald. One great Source of the Enmity between these two Prelates, was the Legatehip.—On the Death of William Archbishop of Canterbury, Predecessor of Theobald, Henry Bishop of Winchester, the King’s Brother, had obtained from Pope Innocent the 2d a Grant of of this Dignity, and for some Years exercised his Legatine Power by calling Synods, &c. to the Prejudice of Theobald who was then Archbishop of Canterbury, and who, as Primate of the Church of England, looked upon himself as the natural legate of the Pope. However Pope Innocent dying the 24th of Sept. 1141, Theobald prevailed on his Successor Celestine the 2d not to renew Henry’s Power, but to confer the Post of Legate on himself. Parker.—Cart’s Hist. Eng. v. 1. p. 645.

(c) Roger Bacon, a learned Eng. Monk of the Franciscan Order. He was born, near Ilkeston in Somersfershire, in the Year 1214, and was descended of a very antient and honourable Family. He was a Prodigy of Learning, and dyed about the Year 1292.
likewise this prohibitorial Edict. — *Rex quidem Stephanus allatis legibus Italice in Angliam publico Edicto prohibuit ne ab aliquo retinerentur.* — King Stephen, indeed, says he, by a Public Edict, forbid any one to retain the Laws brought from Italy into England; But *Theobald* being afterwards reinstated in the Kings good Graces, and this Matter as is not uncommon, undergoing a second Consideration, that Edict, having been either revoked, or having fallen to nothing, proved of no Effect; wherefore, notwithstanding that Edict, the *Justinian* Books were retained; Lectures, and a public Profession of the Imperial Law allowed of: which, the same *Joannes Sarisburinensis* above mentioned, who flourished at the very Time when Silence was joyneid the aforesaid *Roger Vacarius*, the first public Professor of the Imperial Laws here, expressly takes Notice of. For he immediately adds †— *Sed Deo faciente, eo magis Virtus legis invaluit, quo eam amplius nitebatur Impietas infirmare.* — But the more Impiety endeavoured to invadilate the Law, the more, through divine Assistance, its power prevailed.
S E C T. VII.

Concerning the English Lawyers in that and the preceding Ages.

Persons skilled likewise in other Branches of Literature in the preceding Ages, applied themselves in earnest to the Study of the Laws and antient Customs of England, as far as they related to it's public and civil Government; and the Lawyers and Judges of the Courts, were chosen out of this Number. And these, according to the difference of their Education, Quality, Dignity, and Conveniencies, lived either in Monasteries, Academies, the Families of the more eminent Bishops, in Colleges, or elsewhere. Now they made no public Use, in this Nation, either of the Justinian, or Theodolian Bodies of Law, but only followed the Customs of their Ancestors, and the Law of their Country, which before was, and down to our own times, still continues to be called the Common Law of England, which was in the time of the Anglo-Saxons called, *pulispithre*, secular or mundane Law, in Contradistinction to *doberpithre*, or the sacred Law, as may be plainly seen in the Laws of the Anglo-Saxons. That is to say, they made Use both in their Studies, and in the Courts of such Decisions only as were settled before their Time,
not unlike those we find in the Annals of the Law received at present among us; and they relied only on the Grounds of such Decisions, on their mutual Analogy, and on the Laws which were, as the Nature of Things required, variously renewed and changed. Of this kind, were those three English Lawyers, who flourished under the reign of William the first, that is, about the Year of our Lord 1070, long before the Roman Laws were introduced hither, to wit, the Monks Sarcus, and Godricus, and Alfwinus, Rector of the Church of Sutton whom we find, by an ancient Register * of this Monastery of Abingdon, to have been—legibus patriae optimis institutis—thoroughly acquainted with the Laws of their Country, in which we read also—vis tantum secularium facundiam et praetitorum Memoriam eventorum insufficiat et corporis circum qua; facile, eorum sententiam ratam suisse, quum edicerent, approbarent. Sed et aliis pluribus de anglis Cauficis per id tempus in Abbatio ftabiluntur quorum collationes nemo saecus refragebat, quibus rem Ecclefiae publicam tuctibus, ejus obloconiores elingues fiebant.—that they delivered themselves with so much Grace on secular Affairs, and had treasured up in their Memory, the Knowledge of so many former determined Cases (plainly intimating, that they were thoroughly versed in what we now call the Annals of the Law) that every body, as soon as they were made acquainted with their Determination, readily acquiesced in it. There were likewise about that Time
Sec. 7. annexed to FLETA.

Time (as we read in the same Register) many other English Lawyers in the aforesaid Abby, whose Counsel were approved of by all wise Men, and the Detractors of the Church, whenever these Lawyers undertook the Defence of its public Affairs, were always put to Silence.—And William the first, tis said, in the fourth Year of his Reign, to have summoned to London from all the counties of England — Anglos nobles sapientes et Lege sua cruiditos, ut eorum et fura et Consequentia ab ipsis audire—His English Nobles, Wisemen, and learned in his Law, that they might inform him of their Laws and Customs. And our lawyers, as well before as after, down to the Time of the Imperial Laws having been in some Sort admitted both into the public Places of Study, and into the Courts, were not primarily trained up in the Knowledge of any other Law, (unless perhaps we except some Heads of the Pontifical Law in daily Use) than that of their own Country—Ranulphus(a) invictus Caufidicus—Ranulph, that unvanquished Lawyer, High Juficiary to King William the 2d, in whole reign the Clergy, for the moft Part, filled up the Places of the learned, even with regard to the English Laws, to which they closely applied themselves, was of this kind. William of Malmsbury also plainly intimates as much, where he tells us, that in the Reign of the same King William — Nullus Clericus

(a) Ranulph, i. e. Ranulph Flambard Bishop of Durham.
Clerks were all Lawyers. — And about the same time that the Imperial Law thus began to be received here, as well as in other Parts. — Aubery de Ver, Earl of Guiplies, chief Justiciary under (b) King Stephen, was, it is evident, in a high degree, eminently learned, and thoroughly versed in the knowledge of our ancient and common Law, without the least composition of the imperial Law. This is the very Person, called by William of Malmsbury,* Albericus de Ver, Homo causarum varietatis exercitatus—Aubery de Ver; one thoroughly versed in a Variety of Causes; the same is affirmed of him by Roger Wendover, Matthew of Paris, and Matthew of Westminster, who moreover style him, as he really was, Comitem Albericum de Ver—Earl Aubery de Ver, he being at that Time, (c) Earl of Guiplies in Normandy. Aubery de Vere,


(b) King Stephen. It appears from Dunstable, that he was also Chief Justiciary, in the latter Ends of the Reign of Hen. 1st. Dog. Chron. Ser. p. 2.

(c) Earl of Guiplies. He was Son of Aubery de Ver, who came over with William the Conqueror. He was not only Chief Justiciary, but was also made by King Henry, Chamberlain of England. He conducted the Defence of King Stephen, who had been summoned by his Brother Henry Bishop of Winchester, the Pope’s Legate, to appear at a Synod at Winchester, for having imprisoned several of the Bishops and dispossessed them of their fortified Castles; and told the Legate, that the Bishops had been punished, not as Prelates, but as the King’s Subjects and Servants. He was killed the next Year 1140, in a popular Tumult at London, being the 5th of the said King’s Reign.

Vere, Son of the aforesaid Earl, who was killed in a seditious Tumult at London, was created by the Empress Matilda, as well as by her Son King Henry the second, the first Earl of Oxford, from whom, by the Male Line, Aubrey de Vere, Son of Robert, the late Earl, a most noble Youth, the twentieth Earl of Oxford, derives at this Time the same Name and Title. But as Roger the Monk and Prior of Bec, read, as we have shewn, publick Lectures here, so it was likewise at that Time customary for other Monks, as well out of, as within their Monasteries, to apply themselves both in the Courts and Schools, to the Study of the Imperial and English Laws; which Custom indeed greatly prevailed, even some Ages before Rogerius, as well as for a short Time after he had been Professor, in this Nation. But it must be likewise confessed, that the aforesaid Custom, about fourteen Years after he had finished his Lectures here, as far as relates to the Reading of Lectures out of Monasteries, either plainly ceased, or ought so to have done, in Obedience to the Pontifical Law: Pope Alexander the third, having in the Year of our Lord 1164, decreed in a Synod held at Tours—ut nullus omni post voto Religiones, post saecul in loco aliquo professio, ad Phylicam Legefice Munia, mandamus legendas perrinatur exire. Si vero exierit, et ad Clausum summa infra spatium duorum Mensam non redierit licet excommunicatus ab omnibus evitetur, et in nulla Causa fi patrocinium

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pae are voluerit audiatur. Reversus autem in Choros, Capitum, Mensa et ceteris, ultimus est etiam exigat et (nisi forte ex Misericordia apostolicae Sedis) totius promotionis speam audiat. Episcopi vero, Abbates, Priores, tunc se enormitati consentientes et non corrigentes spoliuntur propriis, honoraibus; et ab Ecclesia liminis acceuntur.—That no Person whatsoever, after he had taken the Vow, or been admitted to a Profession in a religious Order, should be allowed to teach, either Physic, or the Civil Law, out of his Monastery; but if he shall leave his Convent, and not return to it within two Months, let him, as an excommunicated Person, be avoided by all the faithful, and is by no Means, should he attempt to defend any Cause, to be heard, and on his Return, he is, both in the Choir, Chapter, Refectory, and all other conventual Offices, to take the last Place after all the Brethren; and let such a one, unless perhaps he (tho' the Mercy of the Apostolic See: be dispensed with, be doomed to lose all Hopes of Promotion; and let the Bishops, Abbots or Priors, who connive at, and do not punish so great an Enormity, be deprived of their respective Honours, and forbidden Entrance into the Church. Pope Honorius the third,|| likewise afterwards confirmed the same Constitution, and this very Canon of the aforesaid Council of Tours, is inserted in the Gregorian Body of Decretals. And it may
may from hence be plainly concluded, that it was before that Time customary with other Monks, as well as with our Roger Monk of Bee, to make public Lectures on, and to teach the Imperial and other Laws, both out of and within their Monasteries, and that they afterwards also taught the same Laws within their own Precincts.
CHAPTER VIII.

SECTION I.

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 second, Richard the first, and John, Kings of England.

The Public Use, such as it was, of the Justinian Laws, bore a Sway here from the time, as we have before observed, of their being first brought and read in England, in the Method of Study, in the Practice and Determinations of the Courts, and in giving Opinions. Neither was the Edict of King Stephen, as hath been from Sarisburiensis before noticed, any obstacle thereunto. The aforesaid King Stephen dying soon afterwards, his Successor King Henry the second, so effectually forwarded the Views of Arch-Bishop Theobald, and