and those under him, that from that Time, those very Laws were, with more Safety, cherished here, and held, at least by some, in much greater Esteem than before. There are, with regard to this matter, very remarkable Specimens extant, both in the above Joanna Sarisburiensis, who, being greatly careff'd by Theobald, was on that Account a very leading Person in his Household, which had thus first introduced the Imperial Laws into England, and in Petrus Blessenius, (d) his Disciple, Arch-Deacon of Bath, and Chancellor of Canterbury. The aforesaid Sarisburiensis, in several Places of his Poliaraticum, * produces out of the Justinian Body of Law, many Testimonies relating to this Subject, and cites them, as if they were at that Time in Force here, or at least as if he looked upon them in that light; and that the very Royal Law likewise, which we have before treated of, was then common in the Mouths of our Countrymen. The same Author, in an Epistle of his to an anonymous Person, § though its manifest it was to some English Prelate, consequently relating to some Affairs of the

(d) Peter Blessenii (Blisi in the Diocese of Chartres) Arch-deacon of Bath, was one of the most learned Men of the 12th Century, in whom much that he was highly esteemed by the greatest Princes and Prelates of his time, and was made Preceptor to William, 2d King of Sicily. Afterwards Henry the 2d King of England, kept him almost always at his Court. He continued Inzulis's History to the Year 1117, the 7 Hen. 1.

He wrote the Life of H.w. the 2d, but it's not known what is become of it, and dyed at Bath about the Year 1254.

English Nation,) as plainly appears from the Mention made in that Letter of the Church of Lincoln) has these Words—ea cautelā diligentiae verfare in talibus, ut videri non possis sitire pecuniam delinquentium, sed quod Pastorem decet, quærere Salutem Animarum. Nōsti quidem quod et Seculi Leges eos acer-bissime punitur Legē Julia Repetundarum, qui in faciendis ex officio § et non faciendis sordidum sectanum lucrnum,—You must proceed in Affairs of this Nature, to wit, in the Exercise of the Ecclesiastical Jurisdiction, with that cautious Diligence, that it may appear you no way covet the Money of the Delinquents, but that you rather aim, as becomes a Pastor, at the Salvation of their Souls; for you know that even according to the very civil Law, those, who in the Execution of their Office, perform, or omit any Duty for the Sake of filthy Lucre, are to be, by the Julian Law relating to Bribery, severely punished. This Author in the above Place, as well as in his Policeraticum,† points at the Lex Julia repetundarum—the Julian Law concerning Bribery—that being, both in the Digest and Code, the very Title of that Law—as of a Law, which he judged to be one of those at that time received in some Measure by the English. And he elsewhere says, that nec jura civilia nec Leges, neither the Civil Laws, nor those of the Realm, decree Children unlawfully begotten, to be upon an equal Footing with such as are born in Wedlock; this he tells us* in his Epistle to Pope Alexander the Third, in which

† Joan. Sarisbur. Policerat. 1. 5. 6.

‡ 26.

which he gives him an Account of a Cause, which had been debated both before him, as a Judge delegated here, as well as in the King's Court, between Richard de Anstey, Nephew, by the Sister's Side, of William de Suckville; and Mabilia de Frevill, her Daughter, concerning the Succession to the Goods of the deceased William. The question was, concerning the Birth of Mabilia, whether it was spurious or legitimate. The Matter was, according to Custom, referred by the Judges of the King's Court, to the Examination of the Ordinary, but upon entering on the Examination and Discussion of this Matter, Legum Principum et Civilium, The Laws of Princes, and the civil as well as the canon Laws, were consulted, and the joint Authority.—Legum et Canonum—of Laws and Canons, was equally produced; by the Former of which Laws the Imperial are manifestly understood.—Mabilia's Advocate also then present, endeavouring to maintain her Cause, both from her Parent's ignorance of the Law, and from the great length of Time, they had been married, produces, as a Precedent of great Authority towards determining the Point then before the Court, a Referent of the two Imperial Brothers, concerning the incontinent Marriage of Flavia Tertia, contracted through ignorance of the Law, and which had subsisted, without being called in Question, a great many Years; but I have never yet met with, either among the Justinian Laws, or any
any where else, that Rescript. Perhaps the aforesaid Advocate produced it from some copy of the Gregorian Code, more complete than the Fragments come to our hands, or likely from the Code* of Jusius Papirius, (e) containing the Constitutions of the Imperial Brothers, which in my Opinion, is at this time no where extant. Here are the words of the ReScript. MONEMUR et temporis diuturnitate quo ignorantia Juris in matrimonio avunculi tui sui, et quod ab avia tua collocata es, et numero liberorum. Idcircoque, cum hanc annuam in unum concurrant, confirmamus statum liberorum vestrorum in eo matri monio quo vestorum (lege quaestororum) quod ante annos, XL. concitatum es, proinde atque in legem concepti essent. We have taken into Consideration the length of time, during which, through Ignorance of the Law, you remained in the married State with your Uncle, your having likewise been given away by your Grandmother, together with the number of your Children; Wherefore we, all these Circumstances concurring, confirm, as requested, the Condition of your Children in that marriage, it having been consummated upwards of forty Years, in the same Manner as if they had been lawfully begotten. And there are undoubted-ly in the Poliomaticum of Sarisburiensis, some Frag-

*(e) Jusius Papirius a Roman Lawyer, who flourished in the Reigns of the Imperial Brothers, and Marcus Aurelius, and collected their Rescripts.

* Grat. de Vitis Jurisconsult. p. 163.
Fragments of the Antients, which are no where else to be met with. It appears from the Writings of the aforesaid Peter, Archdeacon of Bath, called also Blefensis, that he, as well as many others, who lived together in the Family of Ithomas Arch-bishop of Canterbury, in the reign of King Henry the 2d, closly applied themselves here to the Study of the Imperial Law.—He indeed afterwards studied Divinity, but at the same time, what kind of use was then made in this Nation of the Imperial Law by the Civilians, may be collected from what he has, whilst he studied the Law, delivered down concerning himself, and those of the same Profession, who lived together with him in the Family of the aforesaid Archbishop. In Domo Domini mei Cantuariensis Archiepiscopi, viri literatissimi sunt, quid quos invenitur omnis restitudo justitiae, omnis cautela providentiae, omnis forma Doctrinae. In possessione et ante comestionem, in Lectione, in Disputatione, in Causerum decisione judiceret se excent. Omnes quaestiones regni nodosae referuntur ad nos, quae cum inter socios nostros in commune auditorium deducuntur, unusquisque secundum ordinem suum sine litem et obstrectatione ad bene dicendum mentem suam acuit, et quod ei confitiosus videtur et fanius, de vena subtiliore producit. Quod si Deus minori quae potiora fuit revelaverit, ejus sententia sine omni invidia et depravatione universaliter acquiescit.—Very learned Men, says he, are to be found in the Family of my Lord, the Archbishop of Canterbury, among
among whom, all Uprightness of Justice, all cautious Foresight, every kind of Literature, is to be met with. Those Persons constantly after Prayers, and before their Reflection, exercise themselves in Reading, Disputation, and deciding of Causes. All the knotty questions which arise in the Kingdom, are referred to us, which being proposed to our Associates in the Common Hall, every one, according to his rank, without Contention, or Reflection, endeavours to speak to the Purpose, and displays, according to the very best of his Capacity, whatsoever appears to him most prudent and sound. But the whole Body, if God is pleased to reveal to one of the Juniors any thing preferable to what has been before offered, acquiesces, without any Envy or Cavil, in his Judgement. Not very long after, \( f \) Sylvester Giraldis Cambrensis, who flourished in the Reigns of King Richard, and King John, in his Distinctions, concerning the Institution of a Prince, cities, under the Name of Elements, the Institutes of Justinian, supposing them, as the first Principles and Rudiments of the Law, simply and absolutely so called, to have been already received among us. In Elementorum libro

\( f \) Sylvester Giraldis Cambrensis. He was of Noble Extraction, and born in 1146, in P. uhokefio. His Family Name was Barry. He was one of the most learned and eloquent Persons of his Age. Attained to great Honours, was the Author of many Treasures, and a great Enemy to the Monks. He lived to be upwards of Seventy, and was interred in the Cathedral Church of St. David's.

Tanner Bib. p. 323.
Sec. 1. annexed to Flenta.

libro scriptum, in capite reperiis Imper- ratoriam majestatem non solum armis de- coratam sed et legibus deget esse ornatum.—

In the Beginning of the Book of Elements, he tells us, you will find it written, that Imperial Majesty, ought to be able, not only to shine in the field, but to be also well versed in the Law. These are the first Words in the Preface to the Institutes of Justinian. It is true indeed, that these Institutes were, as it is plain from the Cujacian, and the other Editions which copy after it, published also from some antient Manuscript under the name of Elements, and even Justinian himself calls them by that Name in his Preface. (g) Gervase of Tilbury likewise, in a Treatise of his, concerning Imperial Pastimes, addressed to the Emperor Otto the fourth, speaking of his Country Britain, and of its Length, and Breadth, takes the Proportions of its Extent, from the Digests, as from Books, allowed by every one, of Authority here. This Author flourished in the Reign of King John. Hac Insula omnium uberrima in longum extenditur octingenti- tis miliaribus, in latum ducentis. Vicens ita- que millibus passuum pro dietis computandis ut qvis Cutionibus l. i. pretendentur in lon- gum quadraginta dietis, et in latum decem.

Our

(g) Gervase of Tilbury. He was Nephew to King Hen.

the ad. and supposed Author of the Black Book of the Ex-
chequer.

Nicetian. p. 61.
Our Island, says he, the most plentiful of any in the World, is in Length, 800 Miles (in this his Account following Bede) in Breadth 200, allowing therefore 20,000 Paces for a Day’s Journey, as in the Pand. &c., quis Cautionibus l. 1. it is in Length 40 Days Journey, and in Breadth 10; for Gaius, citing that Title and Law, has these Words, Vicem millia Passium in singulos dies numerari Praetor jubet, &c. The Praetor orders that 20,000 Paces shall be looked upon as the Standard of a Day’s Journey, which was likewise formerly received by our own Lawyers, in what they call Journees Accomptes. Journeys Accomptes, or Dietus computatas, a computed Day’s Journey. And that highly magnified Vision of the Monk of Evesham, pretended to have happened in the Year of our Lord 1196, or in the Reign of King Richard the First, sufficiently proves, how greatly England abounded, even in those Days, with the Students in the Imperial Law. A Clerk, formerly this Monk’s intimate Acquaintance, is therein represented § to be in the third Place of Punishment, in Purgatory. *Atque hic suo tempore eorum quos Legiflas et Decretiflas appellant peritifimus habebatur, unde in redditibus.* And this, says the aforesaid Monk, was reckoned the most learned of all the Civilians and Canonifls of his Time, whence in the Revenues (so Matthew Paris has it) but it ought as appears from a very antient Manuscript which I have by me of that Vision, to be read thus, *earum etiam facultatum Auditores*
in Scholis quam plurimos insituerat et su-
binde Magnatum familiaritem sibi concili-
arat. Hinc redditibus.— (He had trained up
also a great many Disciples in the Schools
of the aforesaid Faculties, by which means,
he by Degrees insinuated himself into the
good Graces of the great Men. Hence he
by the Revenues) Ecclesiarum ampliatus, &c.
— of the Church becoming rich, &c.
'Tis evident the above Author, speaks in
this Place of some Civilian or Canonist,
who was either of our own Nation, or had
lived here, and been a Professor among
us; wherefore the learned in the Imperial
Laws, were at that time, or about forty
Years from the first public Lecture of Va-
carius usually called from that Law a-
mong us, Legistae, Civilians; and such as
were Professors of the pontifical Law,
were styled Decretistae, Canonists. And these
likewise taught at that time both the Civil
and Canon Law, in several other Schools.
The same Monk informs us, That this
Clerk alone had brought up here a great
many Lawyers, and that he was looked up-
on as the most learned of them all; upon
which Account there is also good Ground
to believe, that from the time of Rogerius,
or thereabouts, a constant Use was made
here of the aforesaid Institution, both with
Regard to the Civil and Canon Law;
And that the same Use continued likewise
among us, till the Authority of the Pope
was by Act of Parliament abolished in
this Nation. For, from that Time, all the
public Lectures, Professorships, and Dignities in our Universities, regarded not the Pontifical, but the Civil Law only. All those who during the aforementioned Ages joined the Studies of the Imperial Law to that of their own Country were among us said to be—legum etiam mundanarum pe-riti*—learned also in the Secular Laws. Neither do I find that Authors in that Age, always made a plain Distinction between the Professors of the Imperial, and those of the English Laws here. Both seem to have been, at least by some, called Civil, the Use of them being, though after a very different Manner, allowed of in our Courts. The following Lines of Walter Mapesius, (a) at that Time a celebrated Court Preacher here, concerning the Preaching of Goliab (this being the signified Name he borrowed) to the Terror of all, and of the last Day of Judgment, must have Relation to the aforesaid Reigns of the Kings, Henry the 3d, Richard the 1st, and John.—

Cogitate Divites, qui vel qualsis estis
Quid in hoc judicio facere potestis.
Tunc non erit aliquis locus hic Digestis.
Idem erit Deus hic Judeus, Autor, Testis,
Judicabit judices Judeus generalis.
Nil ibi proderit Dignitas Regalis, &c.

Apud

(a) Walter Mapes. was a witty old Fellow, who lived in the Reign of Henry the second.

* Vid. Visionem Thucend Purgatorii in Mat. Parisian. 120. b.

Note: The asterisk (*) indicates a reference to a Latin phrase that is not fully transcribed or expanded in the text provided.
Apud nostrros Judices Jura subvertuntur  
Et qui legem faciunt lege non utuntur.

The aforesaid Preacher discoursing in his Sermon concerning all kinds of Administration of Justice among us, mentions the Digests, as if he took it for granted that they were made Use of in all the Courts here. And there are, with regard to the Imperial Law being admitted into the Pontifical, as far as this was in those Ages practised here, many plain Testimonies, both in the Appendix to the third Council of Lateran, held under Pope Alexander the third, and in the more antient Collections or Compilations, as also in the Gregorian Decretals, in which a great number of Instances of Forensic Suits, at that time instituted in England (in the Pontifical Consistories indeed) both according to the Imperial and Pontifical Law are to be met with among the Papal Rescripts; the Grounds of which Law Suits were also discussed according to the Imperial or Justinian Law. And we are certain, that Hubert Walter, Archbishop of Canterbury, a Pupil of O

(b) Hubert Walter, born at West Dereham in Norfolk, and educated in the Family of Ranulp de Glanville; He was Archbishop of Canterbury in 1193.—Chief Julicry of England, and Legate of Pope Celestine the third in 1194, and Lord Chancellor, in 1199.—but Pope Innocent the 3d. would not renew his Legatine Power, and likewise required him to resign his Office of Julicry (as not tenable by the Canons) which he did in 1198, and dyed the thirteenth of July 1205. Cartis Hift. Of Eng. v. 1. p. 805,—De Canon. Tit. Ieffiticius.

Now
Selwyn's Dissertation

Ch. 8.

Ranulphe de Glanvill's, † exercised in the Reign of King Richard, the Office of High Justiciary of England, § and must of course have been been very instrumental in causing a particular regard to be paid in the Universities and Courts to the Imperial Law, thus chiefly by those of his own Function lately admitted among us. The like may be said of the Chancellors || of England, and of others, usually at that Time advanced out of the Hieratical Order, to some of the highest Dignities in the public Government. And Bishops now and then enjoyed the Offices, both at one and the same Time, of Chancellor and Justiciary of England, as William Bishop of Ely did under the just mentioned King Richard. Yet it is very common for Historians, even in those Ages, to make more express Mention

How great the Office and Power of the Justiciary of England was, take from Spelman's Index, where mentioning W. J. D. D. the Birth Place of this great Prelate, he adds, "Hic Hubertus sub Ranulphe de Glanvillia, illiwa " illo totius Angliae justiciario euntritus, evasit Archiepiscop " cupus Cantuarii, Cancellarius Regis Richardi I., Le " gatus Papa Celestini IV. et totius etiam Angliae Justi " ciarii. " Miraberis tot in unum collatos Magistratus, " praeferunt ibi recte intellegeris quanti sub hoc seculo nu " nus fuerit justitiarii, potestate seil, omnes regni Magis " tratus, dignitate omnes superannis Proceres. Poil Re " gem, primus universum completèbat ar folus rem judici " ariam; officium Capitalis Justitiarii regis tribunalis " Capitalis Justitiarii Civilium Placitorum, Capitalis " Baronum Scaccarii, et in plerique Magistrati Populi "orum, Diposuit de Thefauro Regis, et in regni ar " duis elato peragebat omnia supercilios. In Absentia " Regis (que sub illo seculo crebro accidit) regni Cuflos " et Pro regis salutatur.—Spelman's Remains, p. 140.
tion of Persons—legum terrae peritorum—learned in the Laws of the Land. And doubtless there were a great many in those Days, who wholly applied themselves, legibus terrae, to the Study of the Laws of the Land, or to those of our own Country, without the least Regard to the Imperial Laws.

S E C T. II.

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

THERE are in Braetan, in the Reign of King Henry the 3d. as has been before shewn, very ample Testimonies with Regard to this Matter; and I am of Opinion, that what we find in the public Records, concerning the Schools in the City of London, in which the Laws were taught in the Time of the aforesaid King, must be referred to this Period. Here are the Words—\footnote{Ret. Chaf. 19 Hen 3. membr. 16. feu Anno 1324.} Mandatum est Majori et Vic-ctcomitibus London quod clamari faciant et firmiter prohiberi ne aliquis Scholas regens de
Selden’s Dissertatio

of legibus in eadem civitate de cætero ibidem. Leges deceat. Et si aliquid ibidem fuerit bujusmodi Scholas regens ipsum fine dilatatione cofferre faciant. Telle R. opud Basing XI die Decembris. The Mayor and Sheriffs of the City of London are commanded to cause to be proclaimed and strictly enjoyed, that no Regent of any Law Schools within the same City, do for the future teach (a) Law therein: and that if any such Regent be therein found so acting, they without Delay cause him to desist. Witness the King at Basing, the eleventh Day of December. There is no Probability that this Mandate was issued, with an Intent to prohibit, either the English Laws, or public Lectures on them. And tis past all doubt, that not only Grammar, but other Sciences also, were of old, and long before the Foundation of Gresham College, publicly taught in the Schools, and Disputations * held therein upon them. In an antient Manuscript Register of the Customs of the Cathedral Church of St. Paul, the fol-

(a) Law therein. The Word, Law, or Leges, being a general Term, may create some doubt at this Distance of time, whether the teaching of the civil Law, or the common, or both, is hereby restrained. But in either case it tends to the same end. If the Civil Law is only prohibited (which is Mr. Selden’s Opinion) it is then a retaliation upon the Clergy, who had excluded the Common Law from their Seats of Learning. If the Municipal Law be also included in the Restriction, (as Sir Edward Coke understands it, and which the Words seem to import) then the Intention is evidently this: by preventing private Teachers within the Walls of the City, to collect all the Common Lawyers into the one public University, which was newly instituted in the Suburbs. Black: Inst. p. 24.
following, is, among the Offices of the Master of the Grammar School, formerly founded there, also mentioned. —— Item quod more solito Deputationes Dialecticae et Philosophiae teneat apud Sanctum Bartholomeum in Jeso ejusdem, et Disputata apud Sanctam Trinitatem. ——Likewise that he, according to the usual Custom, hold Disputations (a) in Logic and Philosophy at Saint Bartholomew's, on the Day of his Festival, et disputata, at the House of the blessed Trinity. We have also frequent mention in the public Records of King Henry the 3d. of John de Lexington, (b) or Lefington, a celebrated Chief Justice, who in the Annals of the Monastery of *Burton, is still* Annum, Cenob, named Seneschallus Regis, et vir providus et discretus, et in utroque jure Canonico seilocet in Bibliothec Cott. et civili peritus. ——The King's Steward, a prudent and discreet Man, and learned both in the Canon and Civil Law. Tis likewise evident from our Histories and Archives, that Prelates and other Persons in holy Orders, who had applied themselves as well to the Study of the Imperial and Pontifical Law, as to the Laws of England, were frequently in those Ages Judges in the

(a) Disputationes. Mr. Selden reads Disputationes. See Selden's Notes on Fortescue, p. 56.

(b) John de Lexington. He had the Custody of the Great Seal, in 31 H. 3d. 1247, was joint Keeper of it with P. Chesterport, in 1253, and was one of the Justices in Eyre, for London, 1251. but don't find he had been chief justice either of the Court of King's Bench or common Pleas. Dag. Origin.
King's Courts, and did in fact exercise among us, all Kind of Jurisdiction. And it is a Truth, which needs no Proof, that Priests also learned in these Kinds of Studies, were at that time here employed as Advocates in all the Courts; which is likewise clear from the Legatine Constitutions of Otto (a) and Ottobon, (b) concerning as well the Office of Advocates, as the Prohibition laid on the Hieratical Order, against their exercising such secular Jurisdiction in this Nation. With regard to the Reign of King Edward the first, what we have before observed on this Head out of Thornton, and Fleta, may be referred to this Period. To which likewise, what is found in our Archives, concerning Francis Accursius the Son, a Doctor of Laws, is to be applied; namely, that King Edward the first invited him and his Family over into England, doubtless to teach the Imperial Laws at Oxford; and that the said Francis had at least resolved upon coming hither, though perhaps he did not execute his Design, for indeed, from what we are going to produce, it cannot be concluded that he actually came hither; though it is evident, from the following Mandate * of the aforesaid King to

(a) Otto. He was a Cardinal-Deacon, Legate of Pope Gregory the ninth, and held a Council at London, in 1257. 22d Hen. 3d. Spelm. Concil.
(b) Ottobon. Cardinal-Deacon, Legate of Pope Clement the fourth, and held a Council in 1248, 32d Hen. 3d, was elected Pope the 11th of July 1276. Spelm. Concil. Pomper's Lives of the Popes,
to the Sheriff of Oxon, for lodging Accursius commodiously there, that he was invited over to this Nation. — Rex Vicicomitis Oxoniae Salutem. Precipimus tibi quod Francisco Accursii Docrori legum vel ejus mandato haec literas nostras deferenti, liberes Manerium Oxoniense ad inhabitandum una cum Uxore sua et familia quamdiu nos bis placuerit. Nolumus tamen quod tu prop- ter hoc impediaris quin diebus statutis in Aulaipsis Manerii tenere valeas Comitatum. In Cujus rei Testimonium, &c. Teste Rege apud Windesore septimo Die Decembris.—

The King to the Sheriff of Oxon, greeting, We command you to put Francis Accursias, Doctor of Laws, or whomsoever he shall appoint the Bearer of these our Letters, in Possession of our Manor-house at Oxford, (at that time the King’s Palace or Castle,) to dwell therein with his Wife and Family during our Pleasure. Nevertheless, we will not that on this Account you be hindered from holding on the stated Days your County Court, in the Hall of the same Manor House. In Testimony, whereof, &c. Witness the King at Windesore, the 7th Day of December. This Francis, was the Son of Accursius the Florentine, that most celebrated Author of Glosses; and as the Name of Accursius the Father, is a thousand times subjoined to the Glosses, so Francis, and Francis the Son of Accursius, who is the very Person thus invited over into England, is often added, and that chiefly
chiefly to Glosses, on what is called the New Digest. We have also the Institutes with his Glosses annexed. None of the Biographers of the Lives of the Lawyers mention his having arrived in England; but they tell us he had agreed with the King of England, (plainly our Edward the first,) to come from Bononia into France, to teach the Imperial Law, in the Territories there subject to the King of England, and that he at last set out from Bononia; but so much against the Will of his fellow Citizens, that they on that Account mulcted him, by a Confiscation of his Goods, which was afterwards, on his return, repealed. Guido Panzirolus * tells us, that

* Guid. Panzirol. I. 2, c. 29.

Is a Rege Angliae in Galliam, ut ibi doceret, deducendus erat, quod cum Bononienses præsenfissent, pæua publicationis honorum indïeta præceperunt ne recederet. Ipsè vero Civès eludens, omnibus amico venditis, dexter, sed bona nihilomnis sunt publicata, unde redire coætus, ubi reversus est eorum Restitutionem † impetravit. Interea Toluæ jus civile aliquamdiu docuit. — The same Francis, was to have been by the King of England brought over into France, to teach the Laws there, of which the Bononians being apprized, they commanded him, on Pain of Confiscation of his Goods, not to depart from thence. But having, by selling all his Goods to a Friend, eluded his fellow Citizens, he set out for Bononia; his Goods nevertheless were confiscated, which

† Vid. Alberic. in l. 17, hi qui C. tit. de restitutione venditione.
which obliged him to return; whereupon they were restored to him. He in the mean while taught for some Time the Civil Law at Toulouse. — From hence may be gathered, that he neither came into England, as well as the Reason of his not coming hither, pursuant to his Agreement with the King. This learned Person died at Bononia, where a Monument is erected to his Father and him, with this short Inscription.*

Sepulchrum Accursii Glossatoris Legum.
Et Francisci ejus Filii.

The Tomb of Accursius the Author of the Glosses on the Laws.
And of Francis his Son.

Which Royal Mandate above-mentioned, plainly proves that the same Francis survived his Father (who, as Authors tell us, died in the Year 1229) down to the Year 1276, that Mandate agreeing with this Year. The aforesaid Roger (a) Bacon, § who lived at that Time, gives the following Account of the frequent Use made of the Imperial Law among us in the Reign of the aforesaid King, particularly by Persons of the

(a) Bacon Roger, (a learned Monk of the Franciscan Order). He was born near Lichester in Severnsethshire in the Year 1214, was descended of a very antient and honourable Family, and dyed about the Year 1294, being esteemed the brightest and most universal Genius, that perhaps the World ever saw. *Biographia Britannica, v. 2d, p. 341.
the Sacerdotal Order, or the Clergy, who, too often in this, as well as in former Ages, (whatever their own sacred Canons decreed to the contrary,) enjoyed in all the King’s Courts of this Realm, the highest Offices of the Law.— Omne Regnum habet sua jura quibus laici reguntur; ut jura Angliae et Franciae. Et ita sit Jusitia in alius Regnis per Constitutiones quas habent, sic et in Italia per suas. Quapropter cum jura Angliae non competant statui Clericorum, nec Franciae, nec Hispaniae, nec Alemanniae, similiter nec jura Italiae ullo modo. Quod si debeat Clerici uti legibus Patriae, tunc est minus in-conveniens ut Clerici Angliae utantur legibus Angliae, et Clerici Franciae utantur legibus Franciae; quapropter maxima Concordia Clericorum et quod hujusmodi Constitutionibus laicalibus subjuntur Colla. Rex quidem Angliae Stephanus altissim legibus Italiae in Angliam publico Edicto prohibuit ne ob aliquo retinerentur, sic igitur Laicus Princeps laici principis alterius leges ressueret multo magis omni Clericus, deberet respuere leges laicorum. Adde etiam quod magis concordant jura Franciae cum Angliae, et e converso, propter vicinitatem regnorum et communicationem majorem gentium istorum quam Italicae et illarum. Quare debereant magis Clerici Angliae subjicere se legibus Franciae, et e converso, quam legibus Italiac.

— Every Kingdom, says he, has its own Laws, by which the Laity is governed; for Instance, England and France have their respective Laws. So likewise Justice
is administered in other Kingdoms, as in Italy, according to their own Constitutions; wherefore if the Laws of England are not suited to the State of the Clergy; much less are those of France, Spain and Germany, or Italy. But if Ecclesiastics ought to be governed by the Laws of the Country they live in, it is then more convenient for the English Clergy, to be governed by the Laws of England, and for the Clergy of France, by those of their own Country; wherefore great Confusion is introduced among the Clergy, by subjecting themselves to such lay Constitutions. After the Laws of Italy had been brought over hither, our King Stephen, by a public Edict prohibited any one to retain them; therefore if one secular Prince is at Liberty to reject the Laws of another, much more ought the whole Body of the Clergy to reject the Laws of the Laity. It may be likewise added, that there is, on Account of France and England being neighbouring Nations, and from their having a greater Intercourse with one another than they have with Italy, a greater Harmony between their respective Laws. Wherefore the Clergy of England, ought rather to submit themselves to the Laws of France, and the French Clergy to those of England, than to the Laws of Italy.——— Thus far Bacon. (a)

Tho'

(*) This was a kind of Inveotive against the receiving of the Civil Law amongst the Clergy in any other nation, saving that wherein it was first bred, that is the Italian.

Seld. on Fortegine, p. 44.
Though this Author speaks only of Ecclesiastics, yet as it is certain that the Clergy in that Age filled among us the chief Places even in the King's Courts of Justice, it can't be doubted but that from the Use of this Law by the Ecclesiastics it gradually also gained ground in those Courts; and that it was manifestly, as such, applied in discussing of Causes. And the Commentary of *John de Aetone*, (a) (by us commonly called *Athone*) on the Legatine Constitutions is to be consulted, for it will plainly appear from that Work, that the Imperial Law was, in that Age, as well as before, made Use of among the Ecclesiastics in this Nation. All this is likewise corroborated by the usual formulary, by which the Archbishops of Canterbury granted in those Ages to Professors of the Civil Law Licence to read it in the Universities, without which they were obliged personally to discharge their holy Functions in their respective Benefices. The following Licence of *John Peckham*, (b) Archbishop of Canterbury in the Reign of Edward the first, is to be seen in a Manuscript Ecclesiastical Formulary which I have by me.

Joannes,

(a) *John de Aetone*. He was Cannon of Lincoln, and dyed about the Year 1350. Tanner.

(b) *Peckham*. Born in Sussex and dyed in 1292.
Joannes, &c. dilecto filio Magistro R. de B. Rectori Ecclesiae parochialis de W. talis diaecesis, Juris Civilis professori, salutem, &c. Eruetur in Dei Ecclesia, que ad sui juris regimen literatis per maxime noscitur indigere, per te, legendo et proficiendo in Scientia literarum, offerri sperantes, ut per bennium a dato praeventium numerandum, in universtitate Oxoniensi insistere valeas studio literarum et promoveri interim minime tenearis, nisi ad Ordinem subdiaconatus duntaxat infra annum recipiendum a tempore tibi commissi regiminis in Ecclesia supradiicta, tecum ratione Juris, &c. juxta formam Constitutionis Bonifacii cum ex eo in ea parte editae, libere dispensus, ita tamen quod eadem Ecclesia interim deserviatur laudabile liter in divinis et Animarum cura diligenter exerceatur in ea. Proviso etiam quod Procuratorem idoneum ibi constituas qui medio tempore ordinarius respondat vice tua, quodque absentiae tuae damnum recompensetur eleemosynarum largitione nostro arbitrio facienda, Dat, &c.

John, &c. To our beloved Son Master R. de B. Rector of the Parochial Church of W. in such a Diocese, Professor of the Civil Law, greeting, &c. We hoping that great Credit, by your professing of and making a progress in the Sciences, may accrue to the Church of God; which as to the Polity of its Rights is known to stand in great Need of Men of Letters, grant unto you our Licence to apply yourself for the
the Space of two Years, to commence from
the Date of these Presents, to the Study of
Letters in the University of Oxford; during
which Time, you shall be under no
Obligation of entering into any other holy
Order than that of a Sub-deacon, which you
are to take upon you within a Year from
the Time of your being appointed Rector
of the aforesaid Church. We hereby, ac-
cording to the Form of the Constitution,
Cum ex eo, &c. to that Intent set forth by
Boniface, freely dispense with you on
Account of your Application to the Law,
on Condition nevertheless, that in the mean
time the same Church be properly served
in all sacred Offices; and that every thing
tending to the Care of Souls be with all
Diligence exercised in it. Provided like-
wise that you therein constitute a proper
Proxy to be, during your Absence, answer-
able in your stead to the Ordinaries. And
that a Compensation be made for your non
Residence, by such Alms as we shall judge
proper. Given, &c.

Now the Title in the Margin is — Disp-
ensatio ad legendum—a Dispensation to read,
which was, as may be seen from the above
Example, common in those Days.
SECT. III.

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

WHAT we have related concerning the Use of the Imperial Law in the above Age, is likewise confirmed by what occurs in the Law Annals of King Edward the second, (a) most beautifully transcribed from the Manuscript of Richard de Winchendon, who lived at that Time and was in all Appearance the first Compiler of them, and given by Sir John Baker Knight, Chancellor of the Exchequer in

(a) Edward the 2d. These Reports were solemnly recommended to the Prels by that great Oracle of the Law the Lord Chief Justice Hale; upon Occasion of the Authorities cited out of them in Sacheverell and Progate's Case, and were published by Sir John Maynard Serjeant at Law, with the Approbation of the Chancellor and all the Judges.
the Reign of King Philip and Queen Mary, to the Library of the Inner Temple, of which he was a Member. For in those Annals, not only the very Words of the Imperial Law, and of its Rules, are, in debating the Cases in Court before the Judges, sometimes quoted at large, tho' indeed without the particular Places from whence such Quotations are taken being expressly mentioned, (which Custom also is even at this Time sometimes practised by our Lawyers) but it is now and then admitted, that the Matter depends on the Authority of the Civil or Imperial Law: and the very Texts also of the same Law, are, according to the usual Manner of citing handed down from former Ages, particularly referred to. We have therein a remarkable Instance of the Authority of the Imperial Law, and in what Manner it was then applied, conformable to which, Decisions were either made, or it was then at least the current opinion that Matters ought to be decided according to that Law. A Statute was enacted that, * Si Depredationes vel rapinae fiant Abbatibus, Prioribus. &c. et ipsi jus suum de bujusmodi deprecatiis insequentibus morte præveniantur, ante quem judicium inde fuerint affectum, Successores eorum habeant aetiones ad bona Ecclesiae suae de manibus bujusmodi transgressorum repetenda.—(a) If any Wrongs

(a) This is c. 28. in the printed Editions of the Statutes.
or Trespasses be done to Abbots, or other Prelates of the Church, and they have sued their Right for such Wrongs and be prevented with death before Judgment be given therein, their Successors shall have Actions to demand the Goods of their Church out of the Hands of such Trespassers.— Seius had spoiled Titius (Prior of Wallingford) of his Goods. Titius is deprived of his Dignity and Semprunius put in his Place, who brings on that Account his Action against Seius; This last pleads that Titius was still alive, and therefore not prevented by Death, according to the aforesaid Statute, on which the Action was grounded. But it was determined, as it had likewise been both in the Time of Edward the first and two Years before decided in the Case of the Prior of Lanton, that the Exception would not hold; the Reason thereof being in this Case added, but somewhat called in Question and disproved from the Civil or Imperial Law by him who first took it down; and lastly affirmed out of the Civil Law by him who transferred the same.— Quia duplex est Mors, et Naturalis et Civilis, et in hoc Casu mortuus est prior quia Dignitate privatur. Sed Clericus qui Librum illum scripsit videlicet Richardus de Winchendon dicit quod salva pace Seniorum suorum, et salvo meliore judicio minus bene dicunt, quia quamvis quis Dignitate privatur; morte civili non est affectus.— Because there are two Kinds of Death
Death (so the Manuscript runs) Natural and Civil, and in this Case the Prior is dead because he is deprived of his Dignity, But the Ecclesiastic, to wit, Richard de Winchidon who compiled that Book, says, that with due Respect to his Elders, and with Deference to those of better Judgment, they are in the wrong, for though a Person is deprived of his Dignity, yet he is not thereby considered as civilly dead—Thus far the said Winchidon; but the Person who transcribed the aforesaid Manuscript of Winchidon subjoins to it is own Opinion also.—

— Sed huysmodi privatio dignitatis vocatur, prout memoriae meae occurrir in jure civilis, media Capitis Diminutio. Sed hic mortuus est civiliter qui efficitur Servos paenae, licet non-dum mortuus; sicut etiam qui deportatur in insulam; id est exulat; velut is cui Aqua et Ignis sunt interdicti, ut Ustegatus. — But such Privation of Dignity, says he, to the best of my Remembrance, is in the Civil Law called Media capitis Diminutio. Now that Person who is to undergo the Penalty, is civilly, tho’ not naturally dead, as likewise is one who is perpetually banished into an Island, that is, exiled, or one, to whom as to an Outlaw, the Comforts of Fire and Water are interdicted.—The same Decision is mentioned in a Manuscript of Law Annals in the Reign of the same King in the Library of Lincoln’s Inn, the Reason being only as follows. Quia Duplex est Mors, siciet civilis et naturalis, et in loco eabo Prior non mortuus, quia Dignitate privatur.
Because there are two Kinds of Death, to wit, Natural and Civil; and in this Case the Prior, on Account of his being deprived of his Dignity, was by the civil Law adjudged dead—wherefore they thought that a Privation of Dignity, taken pro media Capitis Diminutione, inferred also a Civil Death, (which the Judges of that Age understood to be implied, as well as a natural Death, in the aforesaid Statute) and this they concluded from their Interpretation of the Imperial Law. § Concerning which very Matter, a Dispute had arose between the Lawyers who flourished at that Time, as we are well informed by that most eminent Lawyer Odofredus, † who lived in the Reign of King Edward the first.—Quære* quid si aliquis in Dignitate constitutus eam perdit, ut quia Princeptis, vel Episcopus, nunquid dicitur Capite minui? dicunt quidam quod sic, quia prior status mutatur, &c.—Suppose, says he, any one who enjoyed a Dignity be deprived of it; as should a Prince or a Bishop, can he be said, capite minui? Some say he may, because his former State is altered.—I before observed that the Pandects were twice cited in that Manuscript of the Annals of the Law in the Library of the Inner Temple, the Titles and Laws also, as is usual, being referred to. The first Case is in the fifth Year of the Reign of the same King, where an Action of Covenant had been brought against the Defendant on a promise to marry the Plain-


* Puf. 5. Ed. 2. fo. 73. b.
tiff, and in the mean time to maintain her. The Question was, whether the Defendant was obliged to perform his Promise immediately after making it? Upon which, Harvey Counsel for the Plaintiff says—Si jeo me oblige a vous en No. et en l’escript il ny ad pas jour de paix nest pas la dette due maintenant apres le sejance del escript? Certes cy est.—If I bind you to pay to you in 1000 l. and no Day for Payment is specified in the Writing, is not the Debt due immediately after making the said Writing? Certainly it is—and gives this Reason for it out of the Imperial Law.—In omnibus obligationibus quibus Dies non ponitur, presenti die debetur off. de Regulis juris in 1 omnibus.—In every Obligation wherein the Day is not fixed, it ought to be performed the same Day—which are the Words of Pomponius, l. 14. under the same Title, from which Place they are thus expressly quoted; but I could never find in the Manuscript in Lincoln’s-Inn Library the least mention of this Case. The second is in the twelfth || Year of the Reign of the same King, in which Scius brought his Action against the Abbot of Abingdon for taking away some of his Goods. The Abbot pleads that there had been Time out of Mind a Custom in Abingdon, that whoever brewed and sold Ale there, should pay one Penny (called Colcefire Peny) to the Abbot, for non Payment whereof the Abbots had always by the same Custom a Right
Sect. 3. annexed to Fleita.

Right to distrain on the Goods of the Person liable to pay it; that Seius both brewed and sold Ale without paying the same, wherefore he took the aforesaid Goods as a Distress. In Answer to which, Devon, Counsel in that Case for Seius, says that this Custom was introduced without just Ground and to the Prejudice of others, and that the Abbot cannot in Consequence thereof be intitled to any Right over the Plaintiff. — Quia quod non ratione introductum est, sed errore primo, deinde Consequentia obtentum, in aliis similibus non obtinet. 

ff. De legibus, lege, non obtinet. ——

— Because whatever is introduced, not grounded on Reason, but originally through Error, and by Degrees grown into Custom, is in other like Cases of no Force. — They are the very Words of Celsus there, l. 39, which Devon in this Case cites in Court to the King's Judges, in the same Manner as that other Law had been before quoted by Hervey out of the Title De diversis Regulis Juris. And in the Margin here is added in old Characters, Note Loyo Note.— Remark the Law Remark, —— But notwithstanding this very Case is inserted almost in the same Words in the Manuscript, we have mentioned in Lincoln's-Inn, yet no such Citation is to be found in it: but indeed Citations from that Law, as is manifest from the Law Annals of King Edward the first and second, very rarely occur in our Au-
thors of that Age, and for my part, I have met with nothing at all of this kind in the Annals of Edward the first.

S E C T. IV.

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

BUT it clearly appears from what has been already produced that our Ancestors in those more earlier Ages made a twofold Use of the Imperial Law; one prevailed in the Episcopal Consistories, and consequently in the Court of Delegates, to which, from those Ecclesiastical Tribunals, they appealed, as well as in the Studies of those who discharged therein the Offices of Judges, Advocates or Proctors; the other was observed, at least in some of the King's Courts, those being usually distinguished by that Title, and the Nature of their Business, from the foregoing, and in the Studies of those who endeavoured to make themselves Masters of the Forms of Actions and Judgments.
ments in such Courts. The first Kind of Use of the same Law here, to wit, as complicated with the Pontificial (not unlike the Union of the Snakes twisted about Mercury's Wand) and by it so moderated as to be of Force in those Consitories, when the sacred Canons § were not opposite to it, has thence continued down to our own Time. For instance, in Testamentary Causes, Succession with regard to the moveable Chattles of one dying intestate, Institutions and Substitutions to the Goods of such Persons, and in some other particular Cases, the Cognizance whereof, by Permission of the Laws of England, belong to those Consitories. And that there was such Use here, is evident, as well from the Commentaries of John de Aitou, on the Legatine Constitutions, made in the Reign of Edward the first, as from those which William Lindwood, (b) in the Reign of Henry the 5th, added to the Constitutions of the Province of Canterbury. Many other Courts with respect to Matters of this Nature, were visibly formed after these Episcopal Consitories; those of several Abbots and others of the Hierarchical Order, to whom the Privilege of Episcopal Jurisdiction was granted, were, as well as the Consitories of both Universities, of this Kind; for in these also the Use of

(b) Lindwood William. Born at Harpsfield, in Lincolnshire, and wrote a Collection of the Constitutions of the Archbishops of Canterbury, from St. Langton to Her Chi- chele. He was Keeper of the Privy Seal to Hen. the 5th. Bishop of St. David's, in 1444, dyed Oct. 21, 1446, and was buried in the Chapel of St. Stephen Westm.

Collyer. Tanner
the Imperial Law prevailed, and has continued down to our Days. But as to what relates to the King's Courts, as usually contradistinguished from the Ecclesiastical Consistories, the Use of the Imperial Law, as handed down to us from former Ages, is to this Day retained in two of them, to wit, the Marine or Court of Admiralty, and in the Court of Chivalry, or that of the Constable and Marshal of England, consequent in the Court of Delegates, to which Appeals are made from them, as also in the Cognizance of some extraordinary Marine and Military Affairs of a Civil Nature. The Judges and Advocates in those Courts profess that Law; yet even in those, the Justinian Law is moderated and enlarged. In the Court of Chivalry, Monomachia or Single Combat between the Parties at Variance is, though contrary to the Justinian Law, allowed of. In the Court of Admiralty, what occurs under the Titles Ad (a) legem Rhodiæm de jactu, de nautico favore, de Usuris nauticis, de Exercitioria actione, and other Matters belonging to Marine Affairs, are usually handled according to the Justinian Law, and expressly taken from the Code of that Emperor, and from Interpreters upon it. But yet in such a Manner, that the Oleronian (b) Laws

(a) Legem Rhodiæm. See Dawson's Origin of Law, p. 120.

(b) Oleronian Laws. See Note p. 54,
Laws likewise, or the Marine Customs so called, may, as is practised by other Nations, be blended with it, and be allowed to have the greatest Authority there. Wherefore those learned Foreigners, who have unguardedly asserted in their Writings——Anglis Romani juris nullum esse usum——That the English make no Use of the Roman Law——are highly mistaken. The same may be said concerning the Use we have made of the Imperial Law, and of the Interpreters of it, in Treaties, and Engagements, to be entered into with foreign Princes, as well as in the Explanation of them, and in the Matter of Embassies. Wherefore doubtless, in the two above-mentioned Tribunals, and in the extraordinary ones of the same Kind, as well as in the Court of Delegates, to which Appeals were made from such Tribunals, the Use of the aforesaid Law was admitted and retained; because Foreigners, who were more accustomed to the Civil Law, were, as well as Natives, so frequently Parties in Marine and Military Causes. And the Reason why our Universities make Use of the Imperial Law in their Consilories is obvious. First, because the Study of that Law had flourished among them; next, that it might appear that equal Justice was distributed to Foreigners, who studied in those Universities, as well as to our own Countrymen, when any Differences arose among them.
S E C T. V.

Whatever Use was formerly made of the aforesaid Imperial Law, either in the rest of the King’s Courts, or in the Studies and Writings of our own Lawyers, as such, it, about the Beginning of the Reign of King Edward the third, wholly disappeared.

But whatever Use might have been formerly made of the Imperial Law, during the above mentioned Interval in the rest of the King’s Courts, observing the English Law called Common or Customary, or in the Studies of our own Lawyers, yet the same having been plainly neglected and rejected, about the beginning, if I am not much mistaken, of the Reign of Edward the third, it certainly soon afterwards disappeared. For no Footsteps of the Use of the same Law can be traced in our Annals, after the Reign of Edward the second, unless any one should conclude, that such Use continued, because a Rule of the same Law, or of the Pontifical, is sometimes indeed, though but very rarely, quoted in Latin, * and that without referring at the same time to any Author. This would be as unrea-
fonable as for any one to say, that Littleton, in writing his Elements on Tenures, made Use of the same Law, because he has there- in inferred that celebrated Maxim of the Imperial Law.—Partus † sequitur Ven- trem.—The Offspring follows the Condi- tion of the Mother — which even those who are wholly regardless of, and Strangers to that Law, are thoroughly acquainted with; or that Plowden, Dyer, and Coke, had made Use of the same in their works, because even they sometimes here and there apply the Rules of the same Law in Latin, not as borrowed from the Imperial Law, but as originally connotate with the English Law. Now that the public Use of the aforesaid Law, entirely vanished among our Law- yers about the beginning of the Reign of Edward the third, and that the Study of the Imperial Law here was indeed cultivat- ed but by a few of our Lawyers under Ed- ward the second, in my Opinion may be plainly concluded from the Cause of the Abbot of Torre, § debated in the King’s Court, about the middle of the Reign of Edward the third, to wit, towards the Year 1347, by which it appears, that one of our celebrated Lawyers, called Skipwith, at that Time acknowledged himself en- tirely ignorant of the Meaning of the fol- lowing Terms in the Civil Law, which no one who had at all applied himself to the Study of the Imperial Law could be sup- posed unacquainted with. The Case is this,
The Abbot of Torre (a) was then impleaded by an Action brought in the King's Name for having caused a certain Prior to be summoned to the Pontifical Court at Avignon for erecting an Oratory — contra Inhibitionem novi operis — contrary to the Inhibition against erecting a new Building — and for not desisting from the Prosecution, although he had received concerning that matter the Kings Prohibition. Skipwith, an Advocate or Serjeant at (b) Law, that is a Doctor of the English Laws, says thus — In ceux parols contra Inhibitionem novi operis ny ad pas entendement — In these Words, contrary to the Inhibition of a new Work, there is no Meaning — wherefore he prays Judgment for the Defendant; to whom Justice Shardelow makes this Reply.

_Ceo ne fis que un restitution en leur ley, per que a ce n' avouimus regard; mes re- spondes si vous avez fuy contre la Prohibi- tion._ — That is no more than a Restitution according to their Law; wherefore we pay no Regard to it; therefore answer whether you have proceeded contrary to the Prohibition — upon which the Serjeant passed to other Exceptions. 'Tis true indeed that a Title is found in the Body of the Canon Law, (c) which doubtless is here pointed at by these Words — leur ley — their Law

(a) See Black, Introducf, p. 22.

(b) Afterwards Chief Baron of the Exchequer.
Section 5. annexed to Fleta.

Law—de novi Operis Nuntiatione—concerning the Prohibition of a new Work—by which is understood a Prohibitorial Denunciation or Inhibition either of a Judge or the party interested, to prevent any Persons injuring his Neighbourhood by erecting a new Building. But 'tis plain, that that Title, as well as some others was transferred thither from the Imperial or Justinian Law, and that those who studied the same Law, or had read the Code of Justinian, could not be ignorant of it, it being extant both in the Code § and Digest. And those most celebrated Lawyers, Joannes, Azzo, Accursius, Hothiensis, Durandus, Odofredus, and others, had before that Time published Commentaries on it, or concerning it. And of that Title and the Law relating to that Subject, Odofredus who dyed after the demise of our King Henry the third, or in the Year 1265, says—Lexe est utilis et multum sibi vendicat locum in Civitate iis et ubique terrarum et in foro seculari et ecclesiastico, et materia hujus legis multum quotidiana est.—This is an useful Law, and great Regard ought to be paid to it in this City (to wit Bologna) and every where else, both in secular and ecclesiastical Courts; and there is frequent Occasion for the Matter of this Law every Day.—But now if that antient Use of the Imperial Law or such as we find it in Bradton, Thornton and the Author of Fleta, and in the Annals of the Law during the Reign of Edward the Second

[Notes: C. lib. 3. tit; D. lib. 29. tit 1. H. (tient. Sum. lib. 5. red tit. Odofred. Ser.ubi h. 4. cod. tit. Odofred. ad C. tit de Operis novi nunciatione.]
cond, had continued in the King's Courts, or among our Lawyers down to the aforesaid Time of King Edward the third; without doubt Skipwith, one of our Serjeants, who it is certain was thoroughly learned in the Laws of England, would not publickly and in open Court have acknowledged himself unacquainted with that signular, entire and well known Title of the same Law—De Operis novi Nuntiatione—concerning the Prohibition of a new Work—(which is the very same—Cum Inhibitione novi operis—and nothing of that Nature is contained in our English Laws) or would have to confidently asserted, that the Words—Inhibitionem novi operis—had no Meaning. Neither does it appear that Shardlow, then Chief Justice, fully understood the Meaning of those Words, when he tells us, that according to the Pontifical Law into which they were transferred from the Imperial, Restitution was meant by them—an Inhibition not being a Restitution. 'Tis however true, as is evident from the Pandects‡ and the Pontifical Law, * that such ample Restitution was to be made by that Interdict or Admonition to the Person injured, that whatever was erected contrary to the Inhibition was to be demolished. (a) Finally, from what has been said, we may justly conjecture, that the above antient Use

(a) Demolished. See Athen's Pandect. Civ. Law. 1. 4; tit. 39.
Sect. 5. **annexed to Fleeta.**

Use in the Imperial Law, whatever it had been among our Lawyers and in the King's Courts here, was, about the beginning of the Reign of King Edward the third, or near the Time in which the same Skipwith and his Cotemporaries applyed themselves to the Study of the Laws of England, wholly laid aside:
CHAPTER IX.

SECTION I.

Our Nation never admitted the Imperial Law into the public, called the Civil Government, whatever Effect the Use of that Law, such as it was, might have had among us, during the before mentioned Interval.

We have already shewn in what Sense, Braenton, Thornton, and the Author of Fleta, applied the Places, which they expressly quoted out of the Imperial Law. Neither indeed do the Testimonies which have been produced from other Authors, who flourished under the Reign of Edward the second, prove that they cited in any other Sense the aforesaid Law. The same may be said of all the rest of our Lawyers, who, during the above Interval, made Use of that Law in their Studies, Discourses, Writings, or De-
Determinations, that is from the middle of the Reign of King Stephen or thereabouts, or from the Time that that Law was first brought hither, down to the beginning of the Reign of King Edward the third, being much about the Space of two hundred years. Now with Regard to the Effect of the aforesaid Use of the Imperial Law at that Time among us, 'tis certain, whatever some of our English Lawyers, who thus made some kind of Use of the Imperial Law, aimed at, or wished for; no Change at all, in Consequence of their Views, ensued in the public or what we call Civil Government; (I here speak of the Kings Courts, and other non pontifical Tribunals, excepting only the two before mentioned, to wit, the Marine and Military) and in Truth the sole Effect of that Use was, that such as applied it in the above Manner, thereby meerly shewed themselves, either skilled in Pretenders to or exceeding fond of the Imperial Law, or desirous of its being jointly with the Common Law of England, by public Authority, admitted into the Practice of the Courts; not that it should with Regard to the Administration of the Civil Government be at all considered as of any Authority. The English Nation also at that Time, and the Judges of the aforesaid Courts, in which Number Bracton himself, Thorton, and perhaps the Author of Fleta were included, were even during that Interval always extremely tenacious.
nacious of the Customs of their own Country, to wit, of the common Law of England; and that they therefore, as far as I have been able to observe, would not suffer any Form either of Speech, Writing or Pleading to be taken from the Imperial Law, or inserted from it into their public Records; For the public Entries of the Declarations, Exceptions, Agreements, Judgments, and other civil and daily Affairs, transacted almost during that whole Interval in those Courts, are still preserved in our Archives. In these, scarce any other Footsteps of the Imperial Law, as it was at that Time admitted among us, can be traced, than what are to be met with in such like public Records of the succeeding Ages, or in those of our own; in which nothing favours of the Imperial Law, they widely differing both in Language and Sense from the Roman Law, and every where manifestly displaying the ancient Style of the English Law Courts, even such as it was before the Reign of King Stephen, or antecedent to the Time of the Imperial Laws being brought hither among us. No Judgment therefore can, either from the Writings of Bracton, Thornton, or the Author of Fleta, (in which the Use this Nation made of the Imperial Law as above represented, is to be found) or from those Passages expressly cited from the Pandects in the Law Annals of Edward the second, be formed of the Effect the Use of the aforesaid Law produced among us, but may plainly be gathered
thered from the just mentioned public Records or Archives during that Interval; to which, numberless Decisions also and Forms of Pleadings during that Period among us, some of which are printed and easily to be met with, others remaining dispersed in Manuscripts, as well as the Promptuary of Rescripts, may be added. This last called Registrum Brevium. The Register of Writs; has been handed down by the English from the earliest Times to Posterity, and has scarce one single Term of the Imperial Law to be found in it; yet we at the same Time meet with in the Forms of Pleading in the Pontifical Consistories, as well as in the Tribunals for marine and military Affairs, (which had received the Imperial Law,) a great Number of Expressions taken from thence. Nor does it indeed appear to me, that the very few Quotations in the above Authors of our own Nation, or those made Use of at the Bar, occurring in the Law Annals of Edward the second, are of greater Weight to prove that the Imperial Law, whatever were the Sentiments of the Authors who thus applied it, was at that Time admitted among us in Matters of public Government, as having in reality, and by public Sanction any Force; any more than the Passages out of Plato, Aristotle, Demosthenes, Cicero, Seneca, Plutarch, and such Authors here and there frequently quoted by the French Lawyers, as is evident from a great Number of their printed Plead-
Pleadings and Decisions, are Proofs, that the French look upon the Sayings and Sentences of the aforesaid Antients to be in Points of Law discussed in their Country of any Weight. Yet it ought not to be forgot, that Civilians and Canonists, whenever any Question arose in the Discussion of Actions instituted according to the English Law, and which was brought upon the Tapis to be determined, suitable to the Rules either of the Civil or Canon Law; such as Questions concerning Marriages, Wills, or other Matters, naturally belonging to the Courts or Consistories, in which the Imperial and Pontifical Law are in a few Things allowed of, were, in the Ages before spoke of, as well as in the following, applied to and heard even in those Courts, which upon other Occasions made Use of the English Law. But our Courts make no other Use of such Lawyers or of the Law they Practice, than they do of Grammarians, Physicians, and such like, whenever a Question happens to arise between contending Parties, the Decision whereof depends on the Knowledge of their Arts.
S E C T. II.

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

Two Reasons may be assigned why the Imperial Law, however blended and applied among us, had in that Interval during which our Lawyers openly made Use of it in the manner we have related, no greater or any other Effect than what we have just now shewn. One is, the manifest and avowed Aversion our Ancestors at that Time expressed for the Imperial Law, as far as it any Way concerned the public Government. The other is, the singular Esteem the Nation set both on the English Law, which we call the Common Law, and on its Maxims, they being from the earliest Times adapted to the Genius of our Nation, and their constant and most firm Adhesion to it on that Account. As to the Aversion our Nation had to the Imperial Law, we have a memorable Specimen of it in the before mentioned Edict, published by King Stephen both against the Imperial Laws, and Roger Vacarius the first teacher of them among us, as well as the Inhibition
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already specified of Henry the third, against the said Laws being read in the Schools of London. We may here also add the Answer publicly given about the same Time in the Parliament held at Merton, which sufficiently shews, that the States of the Kingdom were then in Dread, left the Imperial Law or some Part of it, should either by itself or by Means of the Pontifical Canons, with which it then was, as it now is, blended, be fraudulently obstructed on the English Law, and the Customs of their Country founded on their Ancestors thorough Experience for many Ages, and on that Account unanimously admitted. An Instance of this is to be seen in that singular Case, wherein the Bishops desired that Children born in Concubinage might by a Subsequent Marriage be legitimated, which the English Laws do not allow of. The Parliament returned the following Answer—— Nolle se Leges Angliae mutare, quae hucusque usitatae sunt ac approbatae—that they would not change the Laws of England, which had hitherto been used and approved — hereby, as it were, intending to signify, that the Imperial Laws were, with Regard to the public Management of Inheritances and Successions, by no Means to be admitted. It must indeed be granted, that the Bishops grounded their Petition on the following Maxim;—— Quia Ecclesia habet tales pro legitimis—— Because the Church owns such for Legitimate—— as if the same had been originally a Part of the Canon Law. And indeed we know from a Rescript of