SECTION THE THIRD.

OF THE LAWS OF ENGLAND.

THE municipal law of England, or the rule of civil conduct preſcribed to the inhabitants of this kingdom, may with ſufficient propriety be divided into two kinds; the *lex non ſcripta*, the unwritten, or common law; and the *lex ſcripta*, the written, or ſtatute law.

THE *lex non ſcripta*, or unwritten law, includes not only *general cuſtoms*, or the common law properly ſo called; but alſo the *particular cuſtoms* of certain parts of the kingdom; and likewiſe thoſe *particular laws*, that are by cuſtom obſerved only in certain courts and juriſdictions.

WHEN I call theſe parts of our law *leges non ſcriptae*, I would not be underſtood as if all thoſe laws were at preſent merely *oral*, or communicated from the former ages to the preſent ſolely by word of mouth. It is true indeed that, in the profound ignorance of letters which formerly overſpread the whole weſtern world, all laws were intirely traditional, for this plain reaſon, that the nations among which they prevailed had but little idea of writing. Thus the Britiſh as well as the Gallic druids committed all their laws as well as learning to memory [a]; and it is ſaid of the primitive Saxons here, as well as their brethren on the continent, that *leges ſola memoria et uſu retinebant* [b]. But, with us at preſent, the monuments and evidences of our legal cuſtoms are contained in the records of the ſeveral courts of juſtice, in books

[a] Caeſ. *de b. G. lib.* 6. *c.* 13. [b] Spelm. *Gl.* 362.

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