of reports and judicial deciſions, and in the treatiſes of learned ſages of the profeſſion, preſerved and handed down to us from the times of higheſt antiquity. However I therefore ſtile theſe parts of our law *leges non ſcriptae*, becauſe their original inſtitution and authority are not ſet down in writing, as acts of parliament are, but they receive their binding power, and the force of laws, by long and immemorial uſage, and by their univerſal reception throughout the kingdom. In like manner as Aulus Gellius defines the *jus non ſcriptum* to be that, which is "*tacito* "*et illiterato hominum conſenſu et moribus expreſſum.*"

OUR antient lawyers, and particularly Forteſcue[c], inſiſt with abundance of warmth, that theſe cuſtoms are as old as the primitive Britons, and continued down, through the ſeveral mutations of government and inhabitants, to the preſent time, unchanged and unadulterated. This may be the caſe as to ſome: but in general, as Mr Selden in his notes obſerves, this aſſertion muſt be underſtood with many grains of allowance; and ought only to ſignify, as the truth ſeems to be, that there never was any formal exchange of one ſyſtem of laws for another: though doubtleſs by the intermixture of adventitious nations, the Romans, the Picts, the Saxons, the Danes, and the Normans, they muſt have inſenſibly introduced and incorporated many of their own cuſtoms with thoſe that were before eſtabliſhed: thereby in all probability improving the texture and wiſdom of the whole, by the accumulated wiſdom of divers particular countries. Our laws, ſaith lord Bacon[d], are mixed as our language: and as our language is ſo much the richer, the laws are the more complete.

AND indeed our antiquarians and firſt hiſtorians do all poſitively aſſure us, that our body of laws is of this compounded nature. For they tell us, that in the time of Alfred the local cuſtoms of the ſeveral provinces of the kingdom were grown ſo various, that he found it expedient to compile his *dome-book* or *liber judicialis*, for the general uſe of the whole kingdom. This

[c] *c.* 17.

[d] See his propoſals for a digeſt.

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