

and Constitutions, in order to transmit them to posterity, & and having, the Confused by, Collected the usages of diverse Cities of Lombardy, they at first made up two Books of them; to which according as these had been either to be approved of, or enlarged, or restrained by Imperial Constitutions down to their time, they added the heads and Contents of them with their own Interpretation; but not the former Constitutions.

Authors differ about the Names of these Lawyers. Before Cujacius our Writers commonly believed that Oberto del Orto, Attorney General and Consul of Milan was Author of this Collection, who with the Assistance of Gerardo del Negro, alias Capagista likewise Consul of Milan and a notable Lawyer, understood this work. But the Incomparable Cujacius has very well proved that Oberto was not the Author of the first ~~Book~~ Book, for we find some Opinions that Displeas'd Oberto and which he rejected. And because those Opinions are attributed to Gerardo del Negro, Cujacius takes him to be the Author of the first Book, and not Oberto. Some, and Among the Best Montanuis in France. *De Jure. ad L. Imperialem. n. 3* not satisfi'd with Cujacius Conjecture, Maintain that the Gerardo, of which we have said more person was Author of the first, yet it is certain that Oberto was Author of the second Book, which he Compil'd for the private Instruction of his son ~~Oberto~~ *Aspleno*. But seeing this second Book according to the Ancient Division contained not only the Opinions of Oberto but also of other Lawyers of those times, which were Contrary to those of Oberto. It is not Credible that Oberto was the sole Author of all that Book; for which cause we are Much inclin'd to the Industry and care of Cujacius, who to Remove that confusion, had divided it into more Books. Thus according to his Division, the first Book is Gerardo's, the second, to the 25 titles, is Oberto's. The rest of the titles are divided into two other Books; the first begins from title 23 which Oberto's *de actio. Aspleno. filio. suo. pater. tom.* The fourth begins from title 25 *negotium. tale. ost.* and it is clear from the very 25 titles that it had been Compil'd by different and Uncertain Authors, in which Cujacius and Montanuis Agree, and in the fifth Book he adds all the Constitutions of the Emperours relating to gifts.

Foot

Foot. 1.

These books Compil'd by the Milanese Lawyers, had not the force of laws in any part of Europe till in private time they were authorized by the Custom of the people, rather than by the Constitutions of any Prince and their Authority was never Absolute, Excepting in cases not Repugnant to the Particular laws and Customs of the Nations. They were Compil'd about the Year 1170 as the Most Accurate *Francisco. de. Ma. Drea* very well proves, and not about the Year 1152 which was the first of the Empire of Frederick first according to *Arthur. Duch. de. Jure. J. lib. 1. cap. 6. n. 5.*

Our Authors are in a Mistake, who on the Authority of *Dofredo* in *Auth. Cassa. de. sacros. Eccl. Mant. an.* that these Books were on their Authority to Frederick 2. as the first Emperour that approved of them, and sent them to the professors of Law in Bologna, to be Read publicly in the school, and that his Command was given to *Ugolino* to Make the *Decima. Collatio. Jur. Doctor. An.* in the same to give to *Dofredo*, who never says that Frederick sent the *Gradal. Books* to Bologna; what Question was there to send them to Bologna seeing they had been known in that City for many Years, and *Bulgardus* had written his *Glossis* upon them there where he was a professor of Law in the time of Frederick first who made him professor of that City? A Man will know in all the other Cities of Lombardy, as being a Native of that Country; and many Italian Writers before the time of Frederick 2. before *Bulgardus*, had already begun to Comment upon them, such as *Ugolinus*, and others mentioned by *Arthur. Duch. lib. 1. cap. 6. n. 13* and *Andrea. d. Jernia. in. prat. n. 25.* *Dofredo* in the place quoted, writes only, that Frederick 2. sent to the Doctors of Bologna not the *Gradal. Books*; but his own Constitutions, and those of the Emperour of the West after *Justinian*, that as *Erne. rind* had reported in the *Code. the. Novellae*, that seemed to be newly added or corrected; so these Doctors were to do the same by these Constitutions, and to add them to the *Code*, not to the *Gradal. Books*, Under such titles as should best suit them; and accordingly they *Mol. atq. Petronius* and extracted many things out of these Constitutions, which they added and adapted to the Law of the *Code. the. Novellae*. Whence we read in the *Code*, besides the *Authentic. tit. of. Jernius*, the *Auth. Cassa. de. sacros. Eccl. de. H. Ecles.* Taken out of the Constitution of the same