

**A DISSERTATION ON THE STATUTES OF
THE CITIES OF ITALY; AND A
TRANSLATION OF THE
PLEADING OF PROSPERO FARINACIO IN
DEFENCE OF BEATRICE CENCI AND HER
RELATIVES: WITH NOTES**

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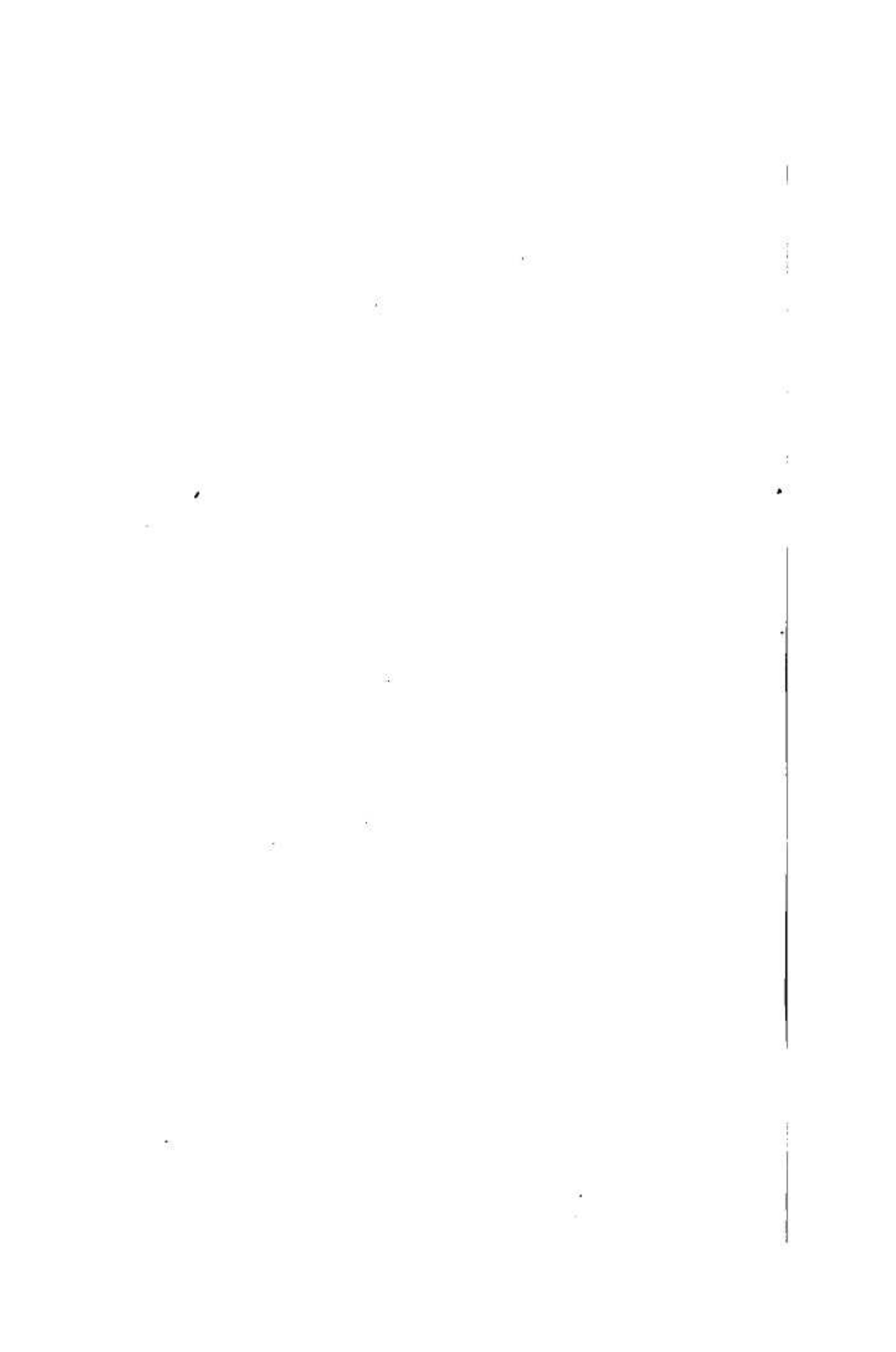
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GEORGE BOWYER

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WITH NOTES.

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OF THE MIDDLE TEMPLE.

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DISSERTATION
ON THE
STATUTES OF THE CITIES OF ITALY.

THE following dissertation is intended as a sketch of an interesting but somewhat neglected portion of legal antiquities and history; namely, of the rise and characteristics of the statutes of the Italian cities; and it will be attempted to bring together in these pages the most important legal and historical points touching those very interesting monuments of the municipal legislation of the middle ages, which are only to be found scattered about in a number of books not easily procured.

The exact state of Italy after the invasion of the barbarians had borne down and overwhelmed the just and splendid laws of the Romans, and raised their own barbarous laws upon the ruins of the classical jurisprudence, and the effect of the invasion of the Lombards on the municipia, or little republics who were in the enjoyment of the *jus Italicum* under the paramount authority of the Roman empire, are

Gravina,
De Ort. et
Progress.
Jur. Civ.
cap. cxxxix.

interesting subjects of research, but their consideration would withdraw us too much from our object; we will therefore pass over that period of darkness, which is so eloquently and energetically stigmatized by the Roman Gravina (whose warmth against the laws of the barbarians gave mortal offence to Blackstone), and proceed to the restoration of the imperial law to its former glory. “*Legum autem Romanarum oraculis post diuturnum silentium suscitatis, Italia, jam pridem oblita sui, respexit tandem ipsa sese, inque suis legibus vetustam imperii majestatem recognovit, recepitque per eas in toto subjecto sibi olim terrarum orbe, si non imperium, at saltem nominis auctoritatem; quæque vires dominationis amiserat, ratione in posterum imperavit;*” “*nostris enim legibus omnes populi submittere fasces; quique ab imperio desciverant Romanorum, eorundem sapientiæ perpetuo paruerunt.*”

Gravina,
De Ort. et
Progressu.
Jur. Civ.
cap. cxli.

In the twelfth century the school of Bologna first gave the impulse to and led the way in the study of the Roman law, which afterwards exercised so powerful an influence over the destinies of Italy.

Tiraboschi,
Stor. della
Litter.
Ital. vol. iv.
(lib. 2.)
p. 355 et
seq.

In that and the succeeding century, the legal science took decidedly the lead of all other sciences. Italy soon became rich in illustrious schools of law. The doctors of those schools were the oracles of the cities in which they lived, and the different cities and states vied with each other in showing honour and offering dignities

and power to the great civilians. In fact, the civil law was the path to power, and was held to be the highest qualification for the most important public functions, according as, indeed, it is expressed in the letter which Justinian placed in the commencement of his institutes. So high a state of cultivation of the legal science (though not uninfected with the barbarism of the times) could not but have a powerful effect on the development of the municipal law of the Italian cities.

Inst.
Proem.
§ vii.

But nothing contributed so much to the rise of the municipal law of Italy as the peace of Constance. There certainly were municipal statutes before the eleventh century. Thus (a) Charlemagne confirms local usages:—"Ut longa consuetudo quæ utilitatem publicam non impedit pro lege servetur," and the existence of municipal laws at a very remote period is asserted by Muratori; but those laws were entirely subordinate to the Lombard or afterwards the Roman law. They were *lex sub graviore lege*, and may be compared with bye laws in our jurisprudence, which are valid only so far as they are not contrary to the common law.

Murator.
Antiqu.
Ital. Med.
Ev. Diss.
xxxii.
vol. ii.

(b) The peace of Constance, concluded

(a) Vid. Canciani, *Leg. Barbaror.* vol. v. p. 22. Canciani observes, that the words of Charlemagne are taken out of the *Corpus Juris Theodosiani*, or out of the *Breviarium Aniani*. By a law of Pipin no custom was to prevail against enacted law, *nulla consuetudo superponatur legi*.

(b) Vid. Canciani, *Leges Barbarorum*, vol. v. *Monitum in Monumenta Legalia*, pp. 12, 13.