haps, conſidering the degenerate ſtate of the world in gene­ral, it may be more beneficial to the Engliſh clergy to found their title on the law of the land, than upon any divine right whatſoever, unacknowledged and unſupported by temporal ſanctions.

We cannot precisely aſcertain the time when tithes were firſt introduced into this country. Poſſibly they were con­temporary with the planting of Chriſtianity among the Saxons by Auguſtin the monk, about the end of the sixth century. But the first mention oſ them which we have met with in any written Engliſh law, is a conſtitutional decree, made in a synod held A. D. 786, wherein the payment of tithes in general is strongly enjoined. This canon or decree, which at first bound not the laity, was effectually confirmed by two kingdoms of the heptarchy, in their parliamentary conventions of eſtates, reſpectively conſiſting of the kings of Mercia and Northumberland, the biſhops, dukes, ſenators, and people. Which was a few years later than the time that Charlemagne eſtabliſhed the payment of them in France, and made that famous diviſion of them into four parts; one to maintain the edifice of the church, the ſecond to support the poor, the third the biſhop, and the fourth the parochial clergy.

The next authentic mention of them is in the fa*edus Ed­wardi et Guthruni ;* or the laws agreed upon between king Guthrun the Dane, and Alfred and his ſon Edward the Elder, ſucceſſive kings of England, about the year 900. This was a kind of treaty between thoſe monarchs, which may be found at large in the Anglo-Saxon laws : wherein it was neceſſary, as Guthrun was a Pagan, to provide for the ſubſiſtence of the Chriſtian clergy under his dominion ; and accordingly, we find the payment of tithes not only enjoin­ed, but a penalty added upon non-obſervance : which law is ſeconded by the laws of Athelſtan, about the year 930. And this is as much as can certainly be traced out with re­gard to their legal original.

2. We are next to conſider the perſons to whom tithes are due. Upon their first introduction, though every man was obliged to pay tithes in general, yet he might give them to what prieſts he pleaſed ; which were called *arbitrary conſecrations of tithes ;* or he might pay them into the hands of the biſhop, who diſtributed among his diocesian clergy the revenues of the church, which were then in common. But when dioceſes were divided into pariſhes, the tithes of each pariſh were allotted to its own particular miniſter ; first by common conſent or the appointments of lords of manors, and afterwards by the written law of the land.

Arbitrary conſecrations of tithes took place again after­wards, and were in general uſe till the time of king John. This was probably owing to the intrigues of the regular clergy, or monks of the Benedictine and other orders, under archbiſhop Dunſtan and his ſucceſſors ; who endeavoured to wean the people from paying their dues to the ſecular or parochial clergy (a much more valuable ſet of men than themſelves), and were then in hopes to have drawn, by ſanctimonious pretences to extraordinary purity of life, all ecclesiastical profits to the coffers of their own ſocieties. And this will naturally enough account for the number and riches of the monaſteries and religious houſes which were founded in thoſe days, and which were frequently endowed with tithes. For a layman, who was obliged to pay his tithes ſomewhere, might think it good policy to erect an abbey, and there pay them to his own monks, or grant them to ſome abbey already erected : ſince for this dona­tion, which really coſt the patron little or nothing, he might, according to the ſuperſtition of the times, have maſſes for ever ſung for his soul. But in proceſs of years, the income of the poor laborious pariſh-prieſts being ſcanda- louſly reduced by theſe arbitrary conſecrations of tithes, it was remedied by pope Innocent III. about the year 1200, in a decretal epiſtle ſent to the archbiſhop of Canterbury, and dated from the palace of Lateran : which has occaſioned Sir Henry Hobart and others to miſtake it for a decree of the council of Lateran, held A. D. 1179, which only prohibited what was called the *infeodation of tithes,* or their being granted to mere laymen ; whereas this letter of pope Innocent to the archbiſhop enjoined the payment of tithes to the parlons oſ the reſpective pariſhes where every man inhabited, agreeable to what was afterwards directed by the ſame pope in other countries. This epiſtle, ſays Sir Edward Coke, bound not the lay ſubjects of this realm ; but being reaſonable and juſt, it was allowed of, and so be­came *lex terre.* This put an effectual ſtop to all the ar­bitrary conſecrations of tithes ; except ſome footſteps which ſtill continue in thoſe portions of tithes which the parſon of one pariſh hath, though rarely, a right to claim in another: for it is now univerſally held, that tithes are due, of com­mon right, to the parfon of the pariſh, unleſs there be a ſpecial exemption. This parſon of the pariſh may be either the actual incumbent, or elſe the appropriator of the bene­fice ; appropriations being a method of endowing monaſ­teries, which ſeems to have been deviled by the regular clergy, by way of ſubſtitution to arbitrary conſecrations of tithes.

3. We obſerved that tithes are due of common right to the parſon, unleſs by ſpecial exemption; let us therefore ſee, *thirdly,* who may be exempted from the payment of tithes, and how lands and their occupiers may be exempted or diſcharged from the payment of tithes, either in part or totally; firſt, by a real compoſition ; or, ſecondly, by custom or preſcription.

*First,* a real compoſition is when an agreement is made between the owner of the lands and the parſon or vicar, with the conſent of the ordinary and the patron, that ſuch lands ſhall for the future be diſcharged from payment of tithes, by reaſon of ſome land or other real recompenſe given to the parſon in lieu and ſatisfaction thereof. This was permitted by law, becauſe it was ſuppoſed that the clergy would be no loſers by ſuch compoſition ; ſince the conſent of the ordinary, whoſe duty it is to take care of the church in general, and of the patron, whoſe intereſt it is to protect that particular church, were both made neceſſary to render the compoſition effectual : and hence have ariſen all ſuch compoſitions as exiſt at this day by force of the common law. But experience ſhowing that even this cau­tion was ineffectual, and the posseſſions of the church being by this and other means every day diminiſhed, the diſabling ſtatute 13 Eliz. c. 10. was made; which prevents, among other ſpiritual perſons, all parſons and vicars from making any conveyances of the eſtates of their churches, other than for three lives or 21 years. So that now, by virtue of this ſtatute, no real compoſition made ſince the 13 Eliz. is good for any longer term than three lives or 21 years, though made by conſent of the patron and ordinary : which has indeed effectually demoliſhed this kind of traffic ; ſuch com­poſitions being now rarely heard of, unleſs by authority of parliament.

*Secondly,* a diſcharge by cuſtom or preſcription, is where time out of mind ſuch perſons or such lands have been either partially or totally diſcharged from the payment of tithes. And this immemorial uſage is binding upon all parties ; as it is in its nature an evidence of univerſal con­ſent and acquieſcence, and with reaſon ſuppoſes a real com­poſition to have been formerly made. This cuſtom or pre­ſcription is either *de modo decimandi,* or *de non decimando.*

A *modus decimandi,* commonly called by the ſimple name