

third book of this ancient commentary, entitled *De Donatione Conditionali*, there is the following embodiment of the maxim: "Modus enim legem dat donationi, et tenendus est etiam contra jus commune, quia modus et conventio vincunt legem," etc. This passage is inaccurately quoted in Coke's *Littleton*, vol. I., at p. 19a.

*Fleta*, a thing of shreds and patches from the garret of mediæval law, is practically of contemporaneous date with Bracton's *De Legibus*, etc., *Angliae*. Certainly not more than fifty years intervened between the appearance of the two books in the thirteenth century, no long interval in the formative period of a national jurisprudence. But Bracton, as will be seen in the passage below, does not state the maxim in its strait modern dress as *Fleta* does; nor indeed does he approach this dress so nearly as the *Leges Henrici Primi*, or Glanvill's *Tractatus*—both earlier works. In the former (c. 49) we read: "Pactum enim legem vincit"; and in the latter (ix. c., xiv.): "Conventio legem vincit."

Bracton(j) says: "Item quia conventiones, conditiones et pacta et modi diversi donationum incident in donationibus, si incontinenti apponantur legem dant donationi et donationem infirmant et, dant exceptionem donatori et ligant personas contrahentium et obligant ipsam rem datam, et transeunt cum ipsa re de persona in personam." Sir Thomas Twiss, in his edition of Bracton (vol. I., p. 129), translates this passage as follows: "Likewise, because conventions, conditions, and pacts, and different modes of donations are incident to donations, if they are forthwith applied, they impose a law upon the donation, and they invalidate the donation and raise an exception to the donor, and bind the persons who contract, and oblige the thing itself given, and pass with the thing itself from person to person."

Treating of the old law of covenants, in Chap. VII., p. 164, of Sheppard's *Touchstone*, the author lays down this proposition: "If a lessor covenant with his lessee that he shall and may have houseboot, hayboot, plowboot, etc., by the assignment of the bailiff of the lessor: this is a good covenant: and yet it seems

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(j) *De Legibus et Consuetudinibus Angliae*, Bk. II., c. V.