

that an intestate's inheritance shall be divided equally between the wife and children, or amongst the nearest of kin according to their degree of relationship. It is impossible to state in general terms a law of distribution more intelligibly than this is stated. A law to the same effect is recognised by the conqueror and his successor up to the time of Magna Charta, when the jurisdiction over intestates' estates was solemnly consigned to the ordinary. That the law of Cnut (or the Anglo-Saxon common law) and the law ratified by the Norman sovereigns of England, and handed over by them to the Ecclesiastical Court, were identical, can be incontestably proved. The Norman authorities did not introduce the French law on this point; for, far from making this or any other innovation on the plan of distributing Englishmen's effect, they would not willingly allow any distribution at all for many generations after the conquest. The common law of distribution has descended to us in the present day; for we have it contained and confirmed in the 22 & 23 Car. II. c. 10. This celebrated Statute at its passing made legislatively no new law, but merely enacted the old law, and that old law was not Justinianean; for the five civilians whose opinion is appended to the judgment of Chief Justice North upon that Act, in Lord Raymond's Reports, use this remarkable expression "our civil law, and the practice of the Ecclesiastical court." We also know historically that the Norman kings resolutely prohibited the propaganda of the Justinianean body of laws in this country, after the rest of Europe had established professorships for teaching it, and had generally embraced its principles.

It is certain that we owe our law to another authorship than that of Justinian, and the question remains—is it of Anglo-Saxon creation? is it an adoption from the European system of Roman law which the Theodosian Code contains? We think there can be no doubt of the latter, for it is preposterous to suppose that the German invaders of our country founded a new private law for their subjects, and that their subjects suddenly forgot their own native private law. Both suppositions are incredible and must be dismissed.

But the private law of the Romanized Briton was the civil law of the Theodosian Code, which France herself did not discard for the Corpus Justinianum, "until," says De Fresquet (*Traité*