

not in excess, has, in his notion upon it, stumbled much nearer the truth. He says, (Book 11. chap. 32.) "It (*i.e.*, the Act for the Distribution of Intestates' estates) is little more than a restoration with some refinements and regulations of our old constitutional law, which prevailed as an established right and custom, from the time of King Canute downwards, many centuries before Justinian's laws were known or heard of in the western parts of Europe." This is not very scientifically put, but it would show that he was acquainted with the great and grave discrepancies between our system and the constitutions of Justinian, and he felt, therefore, that it was impossible to identify the one with the other; and as, in the then state of learning on the subject, he could not bring his mind to the conception of any Roman jurisprudence other than *Corpus Justinianicum*, he could do nothing else than Anglo-Saxonize our law of distribution. He did not know that the common law of Europe was for many centuries a *præ-Justinian* Roman law, and that, as it was only exchanged for the other at a late period in Europe, and under circumstances of the freest election, our own law of distribution might more plausibly be ascribed to the former than to a supposed custom.

In this state of the question we think that any inquiry into the true origin of this section of our law may not be a mere matter of curious historical research, but will tend to show in a clearer light certain imperfections appertaining to it which, though long and unaccountably acquiesced in, are not the less unreasonable and indefensible defects. The Roman law having been, as we all know, established in Britain, underwent with the rest of the empire all those changes in its principles which were elaborated at head-quarters. The great collection of laws, embodying these improvements, which bound all Europe, was the Code of Theodosius II. This Code, which was promulgated A. D. 438, was the common law of Europe for many centuries after the great work of Justinian had become law for the East, and it is to this Code that we must ascribe the origin of the law of distribution. For in it, and in it alone, we find certain specific conditions of legislation which denote the order system rejected by Justinian. We have evidence of a law of distribution in this country in Anglo-Saxon times. Cnut distinctly declares