

APPENDIX.

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THE DISTRIBUTION OF INTESTATES.

It is singular that in this discursive age our statutory scheme of distributing intestates' personal estates has never been impugned, or even considered. It has been accepted at all hands as a piece of unimprovable wisdom, adapted to all conditions of life and all stations of society ; and so thorough has been this acceptation that its origin has excited no one's curiosity, and its discrepancies from the Novells of Justinian and the continental system have neither occasioned surprise nor received explanation.

The rude idea, however, of the English mind has been, that this scheme of distribution is either a direct adoption, or an indirect reflection from the civil law, though what may be meant by that ascription is never clearly stated by those who assert it. They leave us in obscurity greater than doubt as to what is the body of Roman law which our countrymen have borrowed their principles from, and at what epoch and under what circumstances they may have done so. They do not tell us whether it is the original system under which the stern republic brought up her hardy children, the system which Gaius and Ulpian elaborated at the close of the second century of our era, under the influences of the Stoic philosophy ; or the system which expanded into truer equity under the open and acknowledged forces of Christianity. And, if it be imputable to the latter, they do not trouble themselves to tell us whether it is the European system of Theodosius the Second or the final perfection of the civil law, which the Novells of Justinian founded in the east and for the east. Yet it is plain, whatever partial assimilation our system may exhibit to all of these, it can only be the legitimate child of one of them which it resembles in essentials. Such is the common idea upon this subject ; but it is remarkable that Mr. Justice Blackstone, whose historical acumen is