Summary of previous statutory provisions.

We saw at headnote to C. 6,55, that the law of the twelve tables only the succession of a male parent with parental power was regulated, the succession devolving in the following order: (1) to children under power; (2) to the nearest agnate; (3) to the clansmen of deceased The right on the part of the clansmen to inherit soon fell out of use.

The fundamental principle of the twelve tables was that the property of the decedent should stay within his family, and the family consisted of the head thereof, the children, and the ascendants and descendants through the male line. Preference was given to males, except only as between brothers and sisters. Subsequent legislation more and more broke down these rules and tended toward placing females on the same footing with males, and cognate relatives on the same footing with agnatic relatives. A mother, not being considered in the light of an agnatic relative of her own children, was at first not entitled to inherit from them. But we saw in title 56 that she was ultimately given that right - in the absence of descendants of such children - along with the brothers and sisters of a deceased child, and was placed on a more equitable footing in regard to the inheritance of such child with her husband.

On the same prinviple children were not at first entitled to inherit from their mother. But that rule was entirely abolished as we saw at C. 6,57. The rights of grandchildren were enlarged (C. 6,55,9 and note), the rule excluding female agnates beyond sisters was abolished (C. 6,58,14), full brothers and sisters were given greater rights than half-brothers and sisters (Novel 84), females were placed on a more equal footing with males, and the demarcation between agnatic and cognatic relatives became less and less distinct. Novel 118 and Novel 127 completed the work begun many years before and succession henceforth was based on blood-relationship, whether through the male or the female line, females and males being placed on the same footing in that respect. Novel 118 follows:

A constitution which takes away agnatic rights and fixes succession on intestacy.

(Constitutio quae jura adgnatorum tollit et successiones ab intestato definit.)

The same Augustus (Justinian) to Peter, glorious praetorian prefect of the Orient.

Preface. Since we find that many and different laws were promulgated in ancient times, by which an unfair difference was introduced in intestate succession between relations tracing their descent through males and females (respectively), we have deemed it necessary to lay down in the present law a clear and succinct distinction as to all intestate successions of relatives, so that all previous laws enacted on this subject shall cease, and only the present provisions shall be observed. As the whole of the intestate succession of a family is contained in three orders, that is to say, in that of the ascendants, descendants and collaterals, who are divided into agnates and cognates, we declare that the first order of succession shall be that of descendants.

c. 1. If, therefore, a man who dies intestate leaves any descendant of either sex or of any degree of relationship, whether tracing descent through a male or female, and whether free from paternal power or not, such descendant shall have preference over all ascendants and collaterals. For though the deceased was subject to the paternal power of another, still we direct that his children of either sex and of whatever degree of relationship shall have preference over the parent in whose paternal power the decedant was, in respect of those things which are not acquired for their parents by other laws of ours, but we keep in force the laws passed giving to fathers the usufruct in property acquired by children or which must be preserved for their benefit. If one of such descendants should die, leaving children behind, his sons or daughters or

other descendants succeed in place of their ascendant (father or mother), whether they were in the power of the deceased, or were free from power, and however many they may be, they take such portion of the inheritance of the deceased as their ascendant if he (or she) had lived, would have taken, this succession being what the ancients called succession by representation (per stirpes). In this order of succession we want to inquiry as to degree, but the grandchildren sprung from a deceased son or daughter shall be called along with sons and daughters, without making any difference between males and females, or whether they trace their descent through males or females, and whether they are under paternal power or not. These are the rules which we have established concerning the succession of descendants. It has been deemed proper by us, however, also to settle the order in which ascendants should be called to the succession of descendants.

c. 2. If, accordingly, the deceased does not leave any descendants as heirs, but his father or mother or other ascendants survive him, we ordain that they shall be preferred over collateral relatives, excepting only brothers and sisters related to him through both father and mother as stated in the succeeding provisions. If many ascendants survive, we direct those to have preference who are nearest in degree of relationship, whether males or females, and whether they belong to the paternal or maternal side. If they belong in the same degree, the inheritance shall be divided equally between them in such a way that all the paternal ascendants, however numerous, may receive one half, and the maternal ascendants the other half, whatever their number. If along with the ascendants there are brothers and sisters of the deceased related to him through both father and mother, they are to be called along with the nearest ascendants, although the latter may be a father or mother, and the inheritance must be divided among them according to the number of persons, so that each of the ascendants and each one of the brothers and sisters will

have and equal share. The father shall not, in such case, lay claim to the usufruct of the share of his sons or daughters, since in place of the usufruct we have given him by this law the absolute ownership of a portion of the inheritance. There shall be no difference between the persons called to an inheritance, whether they are males or females, or whether related through males or females, or whether the person to whom they succeed was under paternal power or not. It remains for us to regulate the succession for the third order, namely that for the so-called collateral heirs, so that when we have regulated that, the law may be complete in every respect.

c. 3. If, accordingly, the deceased leaves neither descendants nor ascendants, we call to the inheritance in the first place brothers and sisters born of the same father and mother, whom we have also called to the inheritance along with ascendants. If there are none, we call to the inheritance in the second place those who are related to the deceased through one parent, whether through the father only or through the mother only. But if the deceased leaves brothers or sisters, and also children of a deceased brother or sister, the latter, whether male or female, shall be called to the inheritance with the brothers and sisters of their father or mother; but however many they may be, they only take such a portion of the inheritance as would have falled to their parent, if living. It follows that if, say, a predeceased brother or sister whose children survive, was related to the deceased through both parents, and there are brothers or sisters surviving related through the father alone or through the mother alone, such children of that brother or sister (being in full blood), although in the third degree of relationship, shall be preferred to the father's or mother's half brothers or half sisters, just as their parent would have been preferred if living. On the other hand, if a surviving brother or sister is related to the deceased through both parents, but a predeceased brother or sister was only related through one parent, then the children of the latter shall be

excluded from the inheritance, just as the parent would have been excluded if living. This privilege is granted, however, in this order of relationship (that of collaterals) only to the sons and daughters of brothers and sisters, so that they may succeed to the rights of their parents; but we do not grant this privilege to any other person in this order of relationship (that of collaterals). But we grant this privilege to the children of a brother or sister only in case when they only inherit along with brothers and sisters of the deceased. But if ascendants also, as stated, are called to the inheritance along with the brothers and sisters, the children of a brother or sister shall not be called to the intestate succession, even though their father or mother was related to the deceased through both parents.(a) Since then we have given to the children of a brother or sister this privilege that they alone, although in the third degree of relationship, shall be called to the inheritance in the place of their parents, along with those who are in the second degree, it is clear that they are preferred to the brothers and sisters of the father or mother of the deceased, although the latter, likewise, stand in the third degree of relationship. 1. If the deceased does not leave, as we have stated, either brothers or sisters, or children of brothers or sisters, we then call all the other collateral relatives, according to the precedence accorded to their respective degrees, so that those nearer in degree of relationship are preferred to the more remote. If, however, there are several of the same degree of relationship, the inheritance shall be divided among them according to the number of persons, which is called a division by heads (per capita).

(a) Changed by Novel 127.

c. 4. We want, moreover, no difference to exist in any succession or in connection with any inheritance, between males and females called to the inheritance, who, as we have determined, shall be called to the inheritance together, whether related to the deceased through males or females, and in all successions the distinction between

agnates and cognates shall disappear, whether, in the earlier laws, (such difference) is stated to arise on account of sex or emancipation, or in any other manner, and we direct that all, without any distinction of this nature, shall come into the intestate succession of their relatives, according to the degree of relationship.

c. 5. From what we have said and laid down in respect to an inheritance, the matters which relate to guardianship are clear. And we ordain that each one according to his degree of relationship, and according to the order in which he is called to the inheritance, either alone or with others, he shall take upon himself the burden of guardianship and no difference in this respect shall arise from the rights of agnation or cognation, but all shall be equally called to the guardianship, as well those who are related through males as those who are related through females to the person under the age of puberty. This, however, applies only to males who are of full age, are not prohibited by any law from undertaking the guardianship, and who have not availed themselves of any excuse which they had a right to bring forward.(a) We forbid women to undertake the burden of guardianship, except in the case of a mother or grandmother. We permit them only to undertake a guardianship, in the order of their inheritance, and that only after they have renounced, by an entry on the public records, a second marriage and the benefit of the Velleian senate decree. If they do this, they have preference as to the guardianship over all collateral relatives, and only testamentary guardians shall have a preference over them, for we want the will and the choice of the deceased to govern.(b) If, however, several, who are of the same degree of relationship, are called to the guardianship, we direct them all to appear before the magistrate, who has jurisdiction in this matter, so they may choose and nominate from among their own number, one or several, as will suffice for the management of the property, and he or they shall administer the affairs

of the person under the age of puberty, as the risk of all who are called to the guardianship, and their property shall be subject, in respect of this administration, to an implied lien in favor of the minor.

(a) See C. 5,30,4; C. 5,70,5; C. 6,58,11.

(b) See C. 5,35,2 and note.

c. 6. All these provisions, however, which we have made in respect to the successions in a family shall apply only to those holding the Catholic faith. In respect to heretics, we direct that the law already enacted by us shall remain in force and shall undergo no change or diminution by reason of the present law. And the rules which Our Serentiy has sanctioned by the present law for all time, shall apply to all cases arising after the beginning of the month of July of the present, sixth, indiction (tax period), and we direct that all cases which arose before that date shall be decided according to the old laws.

Epilogue. Your Glory, accordingly, must take care that the provisions made and enacted by the present law, will be made known to all - in this imperial city by edicts published in the usual manner, in the provinces by mandates sent to the honorable presidents thereof, so that no one of those subject to our imperial sway, may be ignorant of the solicitude of Our Clemency on their behalf, provided that the publication of the present law shall in all places be made without expense of any person in the city or provinces.

Given July 16, 543.