Book VI.
Title LIX.

Matters common to successions.
(Communia de successionibus.)

Bas. 45.1.50.

6.59.1. Emperors Diocletian and Maximian and the Caesars to Variana.

You should know that a sister who remains in her father's household has no better right to the property of an emancipated brother than has another emancipated brother, and if they both seek the right to the possession of the inheritance in the usual manner, they inherit alike.
Subscribed at Sirmium May 18 (294).

6.59.2. The same to Apollinarius.

If your father, an agnate relative of your second cousin who died intestate, entered on the latter's inheritance under the civil law, or if this was not done in the beginning or was prevented by loss of status (emancipation), he succeeded by virtue of the customary admission to the right of possession of the inheritance, and if you acquired your father's inheritance, you should go before the president of the province and sue the guardian of the decedent (the second cousin) in regard to his guardianship.
Given at Verona May 19 (293).

6.59.3. The same to Ulpiana.

It is most certain that the succession of a stepson who died intestate, does not belong to his stepfather, either under the civil or the praetorian law.
Subscribed at Sirmium February 15 (294).

6.59.4. The same to Aurelius Asterius.

A slave can have no heirs.[1]
Given April 5 (294).

6.59.5. The same to Justina.

You cannot rightly claim the succession of your paternal aunt to whom, according to what you say, her sons (your cousins) succeeded. 1. But since you allege that these, too, died intestate, then if those whom you call stepsons of your aunt, were agnatic brothers of the sons, there is no doubt that, being of the second degree, both by right of agnation and cognation, they will be preferred to you. If, however, your cousins had a different father, they (the so-called stepsons) are not the stepsons of the mother (your aunt), and if you show that you were granted the right of possession of the inheritance, you may sue to recover the property.
Subscribed February 18 (294).

[1] [Blume] His property belonged to his master.

Note.

A father had sons by a first marriage. He then married another woman and had sons by her. This woman and her sons died. The sons of the father by the first marriage were agnatic brothers of the sons of the woman that died, and had the first right to inherit from the sons of the woman.

Suppose, however, that the woman had no children by the father above mentioned, but married another man and had her sons by him. In such case the cousin of the sons of the woman had the first right. See Novel 84.

6.59.6. The same to Publicianus.

It is certain law that the succession of the intestate will go to the maternal uncle, who is of the third degree, in preference to the cousin (consobrinus) who is of the next degree of relationship.[2]
Subscribed October 1 (294).

6.59.7. The same to Nicolous.

No succession is promised to any person by reason of any right of affinity (relationship by marriage).
Given October 6 (294).

6.59.8. The same to Justa.

Before an appointed heir of any portion of an inheritance who is capable of taking it repudiates it, or in some manner loses the right to claim it, no one succeeds the testator by right of intestacy. You perceive, therefore, that while the hope of testamentary succession exists, the property cannot legally be claimed by right of intestacy.
Subscribed at Retiarin March 10 (294).

Note.

An heir appointed under a will might not enter at once. During that time the inheritance was vacant (hereditas jacens). Such appointed heirs might ask time for deliberation as to whether to accept or not, as set forth in headnote C. 6.30. During that time it was uncertain whether the deceased would finally die testate or intestate, but no claim to the inheritance as intestate could be made until it had been determined whether the heirs under the will would accept. See Mackeldy § 737.

6.59.9. The same to Sopatrus.

The master of a female slave cannot claim the succession of a free man, who lived with the slave, by reason of any such intercourse.
Subscribed at Nicomedia December 18 (294).

6.59.10. The same to Donuvius.

Nurselings do not, simply by reason of the fact that they are such, acquire any rights either by the civil or the praetorian law to the inheritance of the parties who bring them up.[3]

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[2] [Blume] The degrees of relationship are set forth in headnote to C. 6.9 (7).
[3] [Blume] See C. 8.51.3.

Subscribed December 27 (294).

6.59.11. Emperor Justinian to Demosthenes, Praetorian Prefect.

We ordain that since a definite order of succession is fixed concerning property, which is acquired (in the maternal property) by children in their father's power through the father's marital relation, namely that if any one of these children dies, his or her part acquired by inheritance, falls to his or her children or grandchildren or great-grandchildren, and if there are none of them, to the full-blood brothers and sisters, and if, likewise, there are none of these, to the half-brothers and half-sisters, and if there are non of them, then to the father - so likewise, a similar order of succession shall be observed as to the property directly descending from the mother, either as a gift among the living or by virtue of a testament or on intestacy, so that upon the death of a son or daughter, his or her posterity shall first be called, if none if found, the full-blood brothers and sisters or half-brothers and half-sisters are the next that are called, according to the aforesaid order, and in the last place comes the father, who will receive the property left, not as a pleasing inheritance, but as a consolation for his sorrow. 1. In all cases, however, when such offspring of the children, or the brothers have the preference over the father in connection with the inheritance, the fee only passes to them and the usufruct of the property belongs to the father.

Given at Chalcedon September 17 (529).

Note.

See headnote to C. 6.57. The property here referred to is that which children receive from their mother. See headnote C. 6.60. The property which such a child received devolved according to the present law, in case of intestacy, in the following order: 1. To his or her children, if any; 2. to the brothers or sisters of full-blood, the principle set forth in Nov. 84 being recognized here; 3. to the brothers and sisters of half-blood who had previously been ordinarily on the same plane with brothers and sisters of full-blood, (see Inst. 2.12 pr.; C. 6.56.7); 4. to the father. But the father received the usufruct where the property devolved on the brothers and sisters of full-blood or half-blood.

The rule of devolution of property here stated had previously been stated in a law of 472 A.D., when it was applied to property acquired by a child under power through marriage. C. 6.61.4. And the same rule was applied a little over a month after the enactment of the present law to all other property acquired by a child under power from outside sources. C. 6.61.6. The rule was changed by Novel 118, the father being given an equal share with brothers and sisters of the full-blood, and a preference over brothers and sisters of the half-blood.[4]

[4] Blume penciled in at bottom of the page on which this note is found: “Law applied—as excepted by 2 Vangerow 40—only if no mother survived, otherwise C. 6.56.7.”