

# *Stranger than Fiction?* *The Jennens Inheritance in* *Fact and Fiction* *Part Two: The Business of* *Fortune Hunting*

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**Abstract** The first part of this article ((2003) 32(3) *CLWR* 211) outlined the early history of the Jennens family and the origins of the fortune of William Jennens, whose death in 1798 led to the litigation which is often described as the model for the case of *Jarndyce v Jarndyce* in Charles Dickens's novel, *Bleak House*. In addition to the series of law suits described in Part One, the second part shows that many other men and women from the British Isles and abroad (especially from the USA) made claims to be entitled to some or all of 'William the Rich's' fortune. The article seeks to explain why this particular inheritance should have generated such exceptional interest and situates the claims in the context of both real and fictional fortune hunting in Victorian England, a species of litigation scarcely examined by historians. It concludes by examining how far the Jennens saga supports Dickens's attack on the workings of the legal system.

## I. The Men Who Would be Rich: England

Besides the cases discussed in Part One, which comprise only those which I have been able to locate in the official record and reports, there may well be others which went to court. William Dunstan mentions one, involving American claimants in 1886, which I have been unable to find and Fisher's report of 1863 says that a Mr Bates of Baring's Bank brought an unsuccessful action in Birmingham.<sup>1</sup> *The Great Jennens Case*, in a frequently quoted passage, asserts that:

[t]here have been at least seventeen cases before the court:— three distinct claims by the Martin family, four distinct claims by Joseph Jennings' family, five distinct claims by Elizabeth Jennings' family, two

1 W. Dunstan, 'The Real Jarndyce and Jarndyce' (1997) *The Dickensian* 27 at 33; C. Smith and C.M. Fisher, *Report to the Jennings Association, USA* (Rutland, USA, 1963), 18.

distinct claims by Henry Jennens' family, and three distinct claims by Edward Jennings' family.<sup>2</sup>

Even on the assumption that they are exaggerating by counting each bill or writ as a separate claim, it is not possible to match the known cases to this list.

However, there were at least as many families who believed they had or might have a claim but who never actually tested it in the courts as there were families who started actions, and the former extended widely over time and place. What follows makes no claim to be exhaustive, but is only what has come to light in a very incomplete search.

Even discounting the members of that 'ridiculous club' in Birmingham which Anne Patrick was anxious to distance herself from,<sup>3</sup> there were several who disclosed pretensions very soon after William's death. One was Joseph Harris, who dropped out as soon as he realized that his grandfather William Jennens was Humfrey's nephew and not his son, and there were three others represented by the attorney Richard Pilcher, who tried to put their claims in person before Lady Andover.<sup>4</sup> Outside the Birmingham area, within a few years of William the Rich's death the Withers family of Eling and Lyndhurst in Hampshire reckoned themselves entitled, and they may be connected with the Ringwood Jenningses who are said on one of James Coleman's pedigrees to have been claiming through Humfrey's son, William for many years.<sup>5</sup> In 1816, according to the family tradition of the Jenningses of Churchstanton, near Taunton, a father and his young son were trekking daily to meet the Honiton coach which would bring them the documents they needed to make themselves rich; alas, they missed the crucial day and with no-one at Honiton ready to pay the postage, the parcel was returned to London and never seen again.<sup>6</sup> This family made further attempts to dig up evidence in the 1850s and one member, Mary Caroline Jennings, was still chasing these shadows early in the next century.<sup>7</sup>

2 W. Harrison and G. Willis, *The Great Jennens Case* (privately published: Sheffield, 1879) 2. The affidavit of Walter Trower (*Jennings v Howe*, 1900, PRO J 4/5892), whose firm had acted for the Curzon-Howes for 80 years, had a list of actions known to have been brought, but it does not survive. It can be inferred that at least seven had been made against the personal estate.

3 See (2003) 32(3) *CLWR* at 225 and below p. 360.

4 Birmingham Central Library, Elford Hall Collection, MS3878/1508a, Harris to Lady Andover, 19 November 1798; 3878/1513, E. Fox to -Yardley (copy), 18 November 1799; 3878/1509, Pilcher to Lady Andover, 9 September 1801 and reply of 11 September.

5 J.R. Goddard, 'The Jennings Affair', *Family Tree Monthly*, November 1993, 8-9; pedigree in *Jennings Box; Pedigree of the Jennens . . . and Other Families*, No. 2 (James Coleman: London, 1869).

6 A. Franklin, *The Jennings Family of Churchstanton, Devon and their Descendants* (unpub., 2001) 9.

7 *Ibid.* at 3-5, 9.

Meanwhile at the other end of the country, Davy's collection of Suffolk materials includes an advertisement for information of 1815 which Davy attributes to a poor man of Charlshfield whose claim was still 'in progress' in 1833; it also has a letter of c.1850 which suggests that another Suffolk family had an interest.<sup>8</sup> And claimants continued to emerge from the West Midlands. Activity in the 1830s has already been noted on behalf of a group of families attached to the 'Bloxwich' descent and by the Crathorns, with a more plausible descent from Edward, Humfrey's brother.<sup>9</sup> The large Crathorn family was again active in the middle of the nineteenth century, when they petitioned the Bank of England under the mistaken notion that monies were still lodged there, and they enthusiastically supported J.C. Jennens's initiatives in the 1870s.<sup>10</sup> Another related family, the Millwards, whose representative was rather assertive at the great family meeting in 1875, claimed a closer link, but admitted to not having found the crucial document to support their claim.<sup>11</sup>

Yorkshire had its share of claimants too. The Meeks of Crayke easily persuaded themselves of a connection which had no basis in fact<sup>12</sup> and there was also a report that a family in Hull had similar notions.<sup>13</sup> In 1858 Mrs Douglas of Hewarth Priory was claimed by an agent to be the next of kin<sup>14</sup> and there were Yorkshire people whose interests were being watched over by the Rushworth brothers of Halifax, who told the 1875 meeting that their claim was irreconcilable with those of the Birmingham families; their clients may have been the Castleford men who finally came to court in 1900 but no link is known and it may have been another family altogether.<sup>15</sup>

The *Jennings Box* at the Society of Genealogists contains examples of some pretty ingenious and rather optimistic pedigree making, notably on behalf of the Westwood and Johnson families.<sup>16</sup> A Dangerfield family claim is cogently set out in a manuscript, *The Family Brief*, which attempts to conflate the Erdington family with another from nearby Wednesbury,<sup>17</sup> and when David Jennens publicized his intention to make his claim in 1901, one of the Dangerfield descendants tried to ensure that they were not overlooked in the scramble for the

8 BL Add Mss 19,137, extract from *Ipswich Gazette* (8 April 1815) and note; paper communicated by Ellis Wade, June 1850.

9 (2003) 32(3) *CLWR* 234. William Doidge married Maria Jennings at Handsworth in 1809.

10 The Crathorn claim is described in the *Birmingham Morning News* (11, 12, 13, 26 February 1875) and there is a pedigree in J.C. Jennens, *The Jennens Case* (London, 1874).

11 *Birmingham Morning News* (26 February, 2 March 1875).

12 D.W.J. Cruickshank, 'Revering the Manes of his Jennings Ancestors', *Family Tree Monthly*, October 1994, 3.

13 Undated newspaper cutting in the possession of Clive Jennens.

14 *Sheffield Daily Telegraph* (5 August 1858). C. Jennings to J. Coleman, undated in *Jennings Box* (Society of Genealogists), shows the descent she claimed.

15 *Birmingham Morning News* (4 March 1875).

16 See especially, 'Extracts from a family bible', donated by C.V. Appleton in 1972.

17 Ms in *Jennings Box*.

spoils.<sup>18</sup> Andrew Sewell explained in a newspaper how his great-great-great-grandfather had pursued a claim of his wife's at great expense.<sup>19</sup> According to David Jennens, the Guests of Kinver got further than most. His story (a very improbable one) is that Joseph Guest had been offered several thousand pounds by one of the Lygons to compromise their claim but his coach overturned on the way home and he died after making a deathbed will.<sup>20</sup>

Coming into the twentieth century, Earl Howe mentioned to an enquirer that among those who importuned him over the fortune was an East Ham railway guard, a Mr Gadd,<sup>21</sup> and he was certainly not the last to imagine himself the rightful owner. Around 1920, for instance, there was a small group of people in the Liverpool area whose family searches among the Jenningses of Dudleston Hall and other families on the borders of north-east Wales had led them to think they had a link with the fortune via the Hayward family, one of whom was William the Rich's last steward, and they pursued this with considerable determination.<sup>22</sup> In other families only traditions remain, without much to show whence they derived or whether they ever went beyond fireside chat. One was a Jennings family from Birmingham which based its rights on their ancestor, John;<sup>23</sup> the Martins of Deptford and the Frenches of Essex are other examples, though the latter at least went so far as to have a pedigree drawn up.<sup>24</sup>

There were some persons, however, who, while asserting that they might be in a close relationship to William the Rich, were too prudent or proud to go fortune hunting. One, by his own account at least, was Daniel Jennens of Evesham,<sup>25</sup> and another possibility is the Rose family, Earls of Strathnairn, who seem to have come into possession of William's christening goblet, probably by a marriage alliance with the Duncombes.<sup>26</sup> And in 1915 *The Dickensian* had a regular contributor who was supposed to be one of the nearest kin.<sup>27</sup> So in counties the length and breadth of England, from the reign of George III to that of George V, men and women dreamed, wrote, searched and in some instances sued to get their hands on this fortune.

18 Unidentified newspaper cutting c.1901, in possession of Clive Jennens.

19 *Times Magazine* (4 March 1995). The descent is claimed through Humfrey's son, William.

20 *Midland Counties Express* (20 May 1905). Sydney Herbert (see (2003) 32(3) *CLWR* 213 n. 12) claimed that Joseph Guest, his maternal grandfather, had married Mary, one of Humfrey's granddaughters.

21 Information from C. Jennens.

22 Correspondence in *Jennings Box*. They believed John Hayward had been bought off with land in Leicestershire: A.T. Kindey to Rev. Whitfield, 20 January 1923.

23 T.H. Bollen's letter in *Family Tree Magazine*, January 1994, 18.

24 'The Jennens Pedigree, 1563-1933', in the possession of Mrs G. French, and information from C. Jennens.

25 Letter to *Birmingham Morning News* (20 February 1875).

26 J.E. Cussans, *A History of Hertfordshire*, Vol. 4 (Chatto & Windus: Hertford, 1870-81) 196, though he mistakenly describes the king as George II.

27 Vol. 11 (February) 1.

## II. The Men Who Would be Rich: Overseas

Nor were they confined to England. *The Birmingham Morning News* of 13 February 1875 said that the Jennens fortune had drawn claims from ‘the US, the Cape Colony, India, Australia, Ireland etc.’, and though only one or two (American) claims seem to have gone to court, there were certainly claimants from several of these countries.<sup>28</sup> They might have added France, since it appears that a couple of Frenchmen came forward among the early, hopeless, claimants.<sup>29</sup> In fact, wherever Jenningses (in all the ten or eleven variant spellings) gathered together in any number, sooner or later a supposed link to William the Rich was sure to emerge; thus Irish Jenningses flocked to the Dublin meeting in 1851 on the assurance that ‘it is supposed that the heirs are to be found in Ireland’, seemingly descendants of a Jeffrey Jennings; not surprisingly little seems to have come of it.<sup>30</sup> Much farther afield, it was reported in Australia in 1903 that several people were preparing to sail for England to make good their claim through Captain William Jennings RN.<sup>31</sup> In the 1920s there was the archetypal little old lady, Mrs Douglas-Jennings, quietly knitting in her home overlooking Sydney harbour while awaiting her inheritance. Alas for Mrs Douglas-Jennings, her descent, through the Reverend James John Durham Jennings, supposedly a grandson of William the Rich’s mythical brother, was a pure fabrication; the ‘Reverend’ proved to have been transported for theft in the 1830s and was ingeniously using his banishment to explain why he could not go home to claim the fortune.<sup>32</sup> In 1930, according to *The Melbourne Herald*, the Trustee and Executors Agency had informed John Joseph Hackett that the discovery of a document of 1826 would make him and others (including 42 Americans) heirs to the fortune.<sup>33</sup> Evidently it did not, but as late as the 1950s other Australians were still contemplating making a claim. The oddest perhaps was that of Charles Palmer of Leedville, Western Australia, who said that, under a stolen will, his near relation, Lady Charlotte Palmer French, should have had the bulk of the fortune.<sup>34</sup>

Canada has also furnished its share. The heir-at-law, according to a Sheffield agent in 1858, was Mr Jennens of St Margaret’s Bay, Nova

28 In a letter to *The Times* (20 August 1867) Hargrave Jennings maintained that claimants appeared every day, from the US, South Africa, India and Australia: ‘I omit Ireland and Canada, which countries have sent to England claimants in profusion.’

29 Elford Hall Collection, MS 3878/1510, E. Foulkes to R. Howard, 27 February 1799.

30 *The Times* (18 August 1851); T.G. Clinton, *Jennings Estate* (Washington, DC, 1852), 3. According to the Smith and Fisher *Report*, above n. 1 at 7, Howe stopped their proceedings through an injunction claiming unlawful maintenance of litigation.

31 Goddard, above n. 5 at 9.

32 He wrote to English newspapers in 1875 urging his claim and had been in contact with Almack, a solicitor of Long Melford, near Acton: information from Clive Jennens.

33 *Birmingham Post* (21 June 1930).

34 Unidentified newspaper cutting (Clive Jennens).

Scotia,<sup>35</sup> and in 1901 David Jennings made a well-publicized return from Montreal and spent the last fifteen years of his life in hopes of making good his claim, dying in Wolverhampton workhouse full of 'strange ideas and grievances'.<sup>36</sup>

But by far the biggest source of overseas claimants has been the United States. The gold rush in those parts seems to have got under way in earnest in the 1840s, with agents making inquiries on behalf of families in several states.<sup>37</sup> Some were readily satisfied that there was no close relationship (both Dean Dudley and David Dudley Field performed that task for the Dudleys),<sup>38</sup> but activity continued at least intermittently, especially in Virginia and several New England states, while Isaac Jennings, who had emigrated from Yardley (Worcestershire) to Utah, managed to spend considerable sums from that distance.<sup>39</sup>

Within some States there were several claimants with very different pedigrees. So it was in Virginia. Sebastian S. Jennings (1810–63, killed with his eldest son in the Civil War), head of a family in Elizabeth county, is said to have visited England three times following up the claim he made as 'the eldest son of the eldest son through Charles'. Since this Charles had been in the colonies from before 1680 and had a son of the same name (1680–1747), this claim had to assume that Charles of Gopsall was not Humfrey's son of that name; the wonder of it is that Sebastian spent so much time and money on such a hopeless cause.<sup>40</sup>

Others said that Humfrey's son, John had made a first marriage to Mary Green and that the elder of their two sons sailed from Whitehaven to Virginia in 1754 with his wife and all their children bar the eldest son, Thomas, who was left behind with a rich uncle. The family became numerous and distinguished in the colony.<sup>41</sup> Still other Virginians made out their descent through Humfrey's son, William, and it was their agents who took statements from William the Rich's former servants in 1853.<sup>42</sup> They maintained that William, having emigrated in 1724, married Mary J. Pulliam, had ten children and lived to an even greater age than William the Rich, dying in Northway City,

35 *Sheffield Daily Telegraph* (5 June 1858).

36 Dunstan, above n. 1 at 32. His story is in the *Midland Counties Express* (6, 20 May 1905) and more briefly in *The Echo* (2 November 1901). His death in Wolverhampton workhouse in 1915 is reported in (1915) 11 (February) *The Dickensian* 1.

37 Though word of a Jennings estate worth £450,000 left to emigrant Jenningses appeared in a Fredericksburg newspaper in 1831: Clinton, above n. 30 at 12.

38 *The Times* (17 August 1867), *Birmingham Morning News* (2 March 1875).

39 W.H. Jennings, *A Genealogical History of the Jennings Family*, vol. 2 (Mann & Adair: Columbus, Ohio, 1899) 507.

40 The Jennings Family of Elizabeth City County, Va., and Anson County, N.C. (1923) 4 *Tyler's Quarterly Historical and Genealogical Magazine* 427–39, and S.S. Jennings to W.C. Jennings, 31 July 1850, at 433.

41 Clinton, above n. 30 at 9–14.

42 Copies of the statements are in the *Jennings Box*. For their provenance see A.E. Kinley to Mrs Whitfield, 7 July 1923, in same.

Virginia, in 1775. An eccentric, undated and unattributed document purports to narrate this history, without of course supplying any evidence to identify the emigrant William with Humfrey's son. The heirs in Amelia county pursued this line with some tenacity, for it was the basis of Mrs Barnett's claim in the 1930s.<sup>43</sup> Yet others gave William the Rich a brother, Charles, whose daughter, Sara went to Virginia with the Dabney family and married Cornelius Dabney in 1721.<sup>44</sup>

Several New England families sent agents to England in the mid-nineteenth century. They included Connecticut people descended from Joshua Jennings, who had arrived there c.1656, and whose agents were unable to make out any usable connection,<sup>45</sup> and others from New Hampshire and Massachusetts (the latter 'very numerous');<sup>46</sup> Philadelphia claimants fared no better in the 1860s.<sup>47</sup> The backbone of successive family associations were New Jersey families who asserted a descent through Humfrey's son, Henry.<sup>48</sup> It is difficult, through the medium of newspaper reports, to sort out the actual claims, which seem to have included the one that is said to have got to court in 1886, only to be thrown out because the agent, who had no rights himself, had joined himself as a plaintiff and because a demand was made for security for costs.<sup>49</sup> However, at a Camden meeting in 1879 it was reported that the attempt was to recover the large fortune left by Samuel, Henry and Isaac Jennens, who emigrated between 1666 and 1709.<sup>50</sup> The leading figure in the original movement, Isaac, wrecked his fortunes and ended a pauper, as did a successor in 1894.<sup>51</sup>

The failure of these New England claimants was far from exhausting American optimism. On 24 January 1891 *The Philadelphia Times* carried the headline, 'Jennens Heirs Win. Triumph of 25,000 heirs to the famous estate. The legacy discovered.' The 'successful' claimants were the 'Humphrey branch', represented by the elderly Hector Jennens of Sandusky, Ohio. Quite what misunderstanding (reminiscent of poor Joseph Martin in 1852) lay behind this headline is not known. This claim was said to be of long standing and derived through Hector's grandfather, who had crossed the Atlantic to Elmira in 1780 but had been too poor to enter the lists at that time.<sup>52</sup> As with

43 Jennings, above n. 39 at nos. 2716–87; *Jennings Box*; and see (2003) 32(3) *CLWR* at 247.

44 'The Jennings Millions' (1912) 1 *National Genealogical Society Quarterly* 41.

45 Smith and Fisher, above n. 1 at 18.

46 *Ibid.*

47 *Ibid.* at 24. The Eyres of Philadelphia also fancied themselves related to William the Rich: *Documents Relating to the Colonial History of New Jersey*, cited <http://familytreemaker.genealogy.com>

48 Jennings, above n. 39 at nos. 2234–2715.

49 Dunstan, above n. 1 at 33. His account is confusing, because he mentions two agents in the same story.

50 *New York Times* (19 June 1879).

51 *Ibid.* (31 December 1888, 10 August 1894).

52 Information from Clive Jennens; *Birmingham Morning News* (2 March 1875).

several claims, great energy and a lot of money went into its pursuit. Hector owed a good deal to Mary Jane Griswold, who was still in England beavering away at the end of the Great War.<sup>53</sup> She was unsuccessful, but in 1928 it was reported that the efforts of two combined branches had brought success. A full page spread in the *American Weekly*, complete with pictures of the beautiful Lady Curzon, poor Miss Flite and the old Court of Chancery in piquant juxtaposition, announced, to the paper's evident scepticism, that 400 new claimants were lined up to take on the Curzons and wrest from them the fortune of 'William L. Jennens'. Sydney L. Geiger, a lawyer of Alliance, Ohio, represented the clan led by Mr and Mrs David Jennings of Alliance, as descendants of 'brother John', while those of another brother, Henry, were in the hands of a Virginia attorney. The third brother, poor Humphrey, had been conveniently disposed of, scalped by 'Red Indians'.<sup>54</sup> It was said they had over 1,000 witnesses ready to sail but the armada never materialized, only the gallant bark of Mrs Barnett.<sup>55</sup> Nevertheless, even in the 1970s Americans were still consulting English lawyers about mythical Jennings fortunes which were probably an echo of William the Rich's.<sup>56</sup> Nor has the quest ended yet.<sup>57</sup>

### III. The Never-Ending Quest: General Considerations

What, then, led so many people from several continents over a century and a half to think that they had the chance of grasping a fortune and, in some instances, lured them into wasting years of their lives and money they could ill afford in pursuit of this illusion?

First there are some general considerations. Inheritance loomed much larger in the nineteenth century than it does today. After the State lottery ended in 1825 and before the arrival of football pools it was the most plausible dream of going from rags to riches overnight and nineteenth-century novels so far indulged this escapism that they have, with pardonable exaggeration, been called 'the fiction of probate'.<sup>58</sup> Sudden and unexpected inheritances, or the dramatic loss of expected ones, featured frequently in their pages, reflecting the underlying reality that Englishmen possessed an unusually complete freedom in the testamentary disposal of their property, even if social and moral constraints generally limited its exercise.<sup>59</sup>

53 A.E. Kindey to Mrs Whitfield, 7 July 1923, *Jennings Box*.

54 *American Weekly* (n.d. 1928).

55 *The Dominion* (8 March 1930).

56 H. Carter, letter in *Family Tree Magazine* (November 1994) 39 and copy of his report, 4 November 1975 (in possession of Clive Jennens).

57 One website contributor pessimistically declaims that it never will be: Mark Tevault, 13 March 1999, <http://genforum.genealogy.com>

58 C. Watson, *Snobbery With Violence* (Eyre & Spottiswoode: London, 1971) 20.

59 P. Polden, *Peter Thellusson's Will* (Edwin Mellen Press: Lewiston, USA, 2002), 127-33.

Of course, *Bleak House*, the novel with which the Jennens fortune is imperishably associated, is to be read as a cautionary tale, a compelling warning against following in the footsteps of poor mad Miss Flite, with her estates expected on the day of judgment and Richard Carstone, with his literally fatal obsession; similarly, in *Little Dorrit*, written a few years afterwards, the unexpected inheritance from an unknown relative which translates William Dorrit from the wretchedness of the Marshalsea to the opulence of high society has tragic consequences. Yet for every reader who drew the moral there will have been another who dreamed the dream, confident that he would remain sane in the pursuit and enjoyment of a fortune.

Dickens was only the greatest of many novelists who explored this theme. Samuel Warren's Titmouse Titlebat, with his windfall in *Ten Thousand a Year*, is among the best known of the many others which formed a staple of circulating libraries and serializations in magazines and newspapers.<sup>60</sup> The most lurid belonged to the school of 'sensation' novels whose outstanding exponent was Wilkie Collins. In their pages the pursuit and retention of ill-gotten gains acquires the trappings of forged and destroyed documents, imposture and worse; to an age saturated in such fiction the tale of the impostor Earl Howe may have seemed less incredible than it does today.<sup>61</sup>

Echoing the fiction, and sometimes inspiring it, were well-publicized actual disputes over inheritance; as one solicitor wrote in reminiscences of his own professional involvement in inheritance disputes, 'reality and fiction tread upon each other's heels in a perpetual circle'.<sup>62</sup> In the 1830s claims to revive dormant peerages came before Parliament and the courts in unprecedented numbers (in the three years to 1838 no fewer than six long-disused baronies were revived) and were satirically noticed in Disraeli's *Sybil*.<sup>63</sup> These cases suggested that lapse of time was no bar, and we have seen that the Douglas case of 60 years before was in the reporter's mind when it came to discussions of elderly women giving birth. Most of these titles were just that, bereft of their ancestral lands, but there were also ferocious disputes over claims to inheritance and estates, with sensational allegations of imposture and dirty dealings in such reported

60 Warren's book was published in 1839. M.F. Brightfield, *Victorian England in its Novels*, Vol. 1, 1840-1870 (University of California Library: California, 1971) summarizes many plots.

61 N. Rance, *Wilkie Collins and the Sensation Novelists* (Macmillan: Basingstoke, 1991).

62 C.R. Williams, *Some Professional Recollections* (Richard Bentley Press: London, 1883) 169.

63 A. Wagner, *English Genealogy* (Clarendon: Oxford, 1960) 328-30. At the inaugural meeting of the Jennings Family Association in 1859 an American agent urged them to hire the counsel who had been successful in the recent Shrewsbury peerage case: *Birmingham Daily Post* (11 January 1859).

cases as *Vane v Vane* and *Chetham v Hoare*.<sup>64</sup> In 1848, shortly before the Jennens case revived, magistrates had been confronted with lurid allegations by a pretender to the Leigh peerage, charging members of the Leigh family with the murders of several workmen more than 30 years before; as in the Jennens case there were also claims that a crucial inscription in a church had been interfered with.<sup>65</sup> A few years later there was widespread publicity when an audacious claim to the Smyth title and estates reached the courts; it involved a family bible which proved to be forged and some 130 witnesses called for a plaintiff whose counsel threw up the case when his client's deceits were exposed.<sup>66</sup> And in the very decade when the Jennens claims revived and proliferated, the 1850s, the saga of the great Thellusson fortune finally reached a conclusion through a last strenuous bout of litigation.<sup>67</sup>

The most famous inheritance case of all, however, was the Tichborne case, which mesmerized the public for a decade from 1867, first with the civil trial and then with Orton's prosecution for perjury. The stirring spectacle of a poor man taking on the establishment aroused strong sympathies in some quarters and Orton still had his supporters long after most of the public were convinced that his imposture had been exposed.<sup>68</sup> Almost as sensational, though more short-lived, was the Druce claim to be the Duke of Portland, which the fifth Duke's bizarre behaviour had made possible.<sup>69</sup> Though Orton and Druce failed, not all claimants did, and successful claims became more likely as the number of big fortunes grew, as more of them were in personalty rather than land, and as more were left by men of humble origin. When such men either died intestate or left property to a class rather than named individuals, the way was sometimes open for distant relatives, and with the mass emigration to the colonies in the nineteenth century more of them, like the Tichborne heir, would be difficult to trace. More advertisements for heirs or next of kin would appear, exciting curiosity, hope and greed.<sup>70</sup>

Fuel was added to the flames of pecuniary desire by the regular appearance of official publications listing unclaimed money. The Bank

64 *Vane v Vane* (1873) 8 Ch App 383 (allegations that a bastard was passed off as legitimate and a register altered); *Chetham v Hoare* (1869–70) 8 Eq 571 (allegations of tampering with burial registers and concealment of a marriage; owners in possession for 149 years).

65 (1929) 7 *Complete Peerage* 569; *The Times* (9, 16, 20 May 1848).

66 (1853) 19 *Law Magazine and Review* 294–317; (1854) 20 *Law Magazine and Review* 371.

67 Polden, above n. 59 at 383–98.

68 F.H. (Lord) Maugham, *The Tichborne Case* (Hodder & Stoughton: London, 1936). At about the same time deluded supporters of the woman who claimed to be Countess of Drinkwater were arrested for public order offences: E. Manson, *Builders of our Law in the Reign of Queen Victoria* (H. Cox: London, 1904) 394–5.

69 B. Masters, *The Dukes* (Blond & Briggs: London, 1975) 197–203.

70 J.M. Crook, *Rise of the Nouveaux Riches* (John Murray: London, 1999) 7–37; W.D. Rubinstein, *Men of Property* (Croom Helm: London, 1981) 12–13; J. Usher, *Facts About Unclaimed Money and Estates* (New York, c.1886) 9–10.

of England had been putting out lists of unclaimed dividends since before 1800 (William the Rich, it may be recalled, had left his uncollected for years) and from 1855 lists of unclaimed money in Chancery were available for inspection. The court had an essentially passive attitude to the funds in its care, ordering payments only upon application, so that if a person entitled was dead, had disappeared or did not know of his rights, the money would simply accumulate until someone asked for it. This led to rumours of vast deposits lying untouched, though most were in fact quite modest. From the 1870s lists were published triennially in *The London Gazette*.<sup>71</sup>

These lists, along with the newspaper advertisements for next-of-kin, heirs and legatees, formed the basic raw materials of the commercial publications which multiplied during the nineteenth century.<sup>72</sup> Some, such as G. Ruddock's *Forgotten Funds*, went further and enticed their readers with stories of great wealth unclaimed or successfully obtained. The 1885 edition of *Dougal's Index Register to Next of Kin, Heirs at Law and Cases of Unclaimed Money* contained an account of the Jennens fortune, while in 1858 *Times* readers interested in the Jennens case were promised valuable information if they invested five shillings (25p) in *Researches Respecting Family History* from J.H. Fennell of Millbank Street.<sup>73</sup> Some of these publications emanated from the offices of firms specializing in tracing heirs; Dougal's claimed to have been established in 1844 and Chambers in 1825. Similar organizations and publications could be found in the USA and James Usher, author of *Facts about Unclaimed Money and Estates*, not surprisingly pronounced, following a visit to England in 1882, that the quest for the Jennens fortune was by no means hopeless.<sup>74</sup> Presumably because its consulate in London grew tired of the endless stream of enquiries from its citizens, the American government

71 The Paymaster-General's Office was said to be inundated with inquiries after the publication of the 1883 list: (1883-4) 28 *Solicitors' Journal* 701. In 1890 the commercial users complained that the list was not arranged in the way they wanted: (1889-90) 34 *Solicitors' Journal* 613.

72 Among those in the British Library catalogue are: *List of Unclaimed Dividends, Heirs to Property and Next-of-Kin Wanted*, reprinted from *Mann's Almanack* (1838, 1843); *Cullmer's Classified and Descriptive Index to Advertisements for Next-of-Kin, Chancery Heirs, Legatees, Persons Wanted and Cases of Unclaimed Money from 1760* (1865-74); *De Bernady's Index Register, for Next-of-Kin, Heirs at Law, Legatees and of Unclaimed Property in G.B., the Colonies and on the Continent, from 1754* (1860, 1883); *Gun's Index to Advertisements . . . from 1600 for Next-of-Kin, Heirs at Law, Legatees and Cases of Unclaimed Money* (1864-82, with a special American list, 1882); *Preston's Unclaimed Money* (1878-1909); *Swan and Co.'s General Index to Unclaimed Property and . . . Heirs at Law* (1886); and *Turner & Co.'s Register of the Names of Persons who have been advertised for in connection with Unclaimed Money and Properties in Chancery etc.* (1897). There was also a *Next of Kin Gazette* and Preston published regular articles in the weekly law journals.

73 *The Times* (20 December 1865). The author has not seen a copy.

74 *New York Times* (19 February 1882).

eventually published its own list of unclaimed estates in the British Isles.<sup>75</sup>

#### IV. The Never-Ending Quest: Peculiarities of the Jennens Case

In addition to these general considerations were some more specific to the search for the Jennings family. First is the name itself. If it had been much more common—a Smith, Brown or Jones—then only the most naïve or optimistic individual would have imagined himself a possible heir at law or next of kin to a wealthy namesake whom he had never known; at the other extreme, a distinctly uncommon surname would have reduced dramatically the number of potential claimants and greatly facilitated the sorting out of family relationships.

As it was there were plenty of people called Jennings—along with all the variants—to be found in various parts of the country. So if anything pointed towards William the Rich or his forebears having a connection with a district in which you or your ancestors had lived, it was all too easy to assume there must be a close link. Suffolk, where he had lived, and the neighbouring parts of Essex, was one obvious area; the West Midlands, where the fortune was known to have originated, was another; Yorkshire, where the obituaries and Nichols's account claimed the family to have originated, was a third.

Another factor was how little was known for certain about William's immediate family. All that was generally agreed was that he was William, his father Robert and his mother Ann, née Guidott, though even that was initially contradicted by rumours that he was illegitimate, which led the King's Proctor to enter a *caveat* before administration was granted.<sup>76</sup> It was therefore only needful to find a Robert in your family with approximately the right dates to fancy that you might have a claim. A good instance of this is the Churchstanton Jenningses, where Robert (1725–1817) filled this role, especially as Mary Caroline, the family's dogged researcher, put it, 'a great mystery always attached to him', in other words, his own origins were not clear.<sup>77</sup> Americans seem to have been particularly prone to being seduced by similarities of name and date but it was, and of course remains, one of the elementary pitfalls that beset uninstructed beginners in this sort of enquiry.

What makes it more liable to occur is two pre-Victorian practices: first, of generally bestowing only one forename and secondly, of choosing that name from a narrow range which therefore recurs in each generation; homonymic cousins are a commonplace and a curse. So, as one writer noted in dismay, it was all too easy to find a John,

<sup>75</sup> *Unclaimed Estates in the British Isles* (Dept. of State: Washington, 1930).

<sup>76</sup> Elford Hall Collection, MS 3878/1514, E. Foulkes's bill, 1799.

<sup>77</sup> Franklin, above n. 6 at 3. See also Cruickshank, above n. 12 at 3 and a pedigree in the *Jennings Box* showing Robert (b.1644) as William's father.

William, Robert, Henry, Edward, Elizabeth among ‘your’ branch; none of the crucial names in the inquiry was really uncommon, even Humphrey.<sup>78</sup>

The source for most of the necessary information was of course the parish registers and they posed serious problems for the unwary researcher. They tantalized by being at once sufficiently complete and seemingly comprehensive to encourage the belief that a full genealogy could be constructed, yet they had too many gaps and omissions for it to be done. The professionals at the Heralds’ College and among agents knew all about these flaws but would-be claimants usually did the searching themselves, through relations or by contacting the clergymen who had custody of the registers. Most laymen were pardonably ignorant about what they might expect to find (and even if they had the enlightenment to seek one, there was initially no handy book to tell them<sup>79</sup>), while clergymen varied widely in their interest, knowledge and helpfulness. Thus, while the Rev. Francis Moore at Duffield seems to have done his best to assist claimants,<sup>80</sup> other Yorkshire claimants alleged that their local vicar had kept pertinent certificates from them for years and a researcher in the early 1920s described another as evasive and unforthcoming.<sup>81</sup>

And despite all the searches and advertisements it fell out that one crucial entry just could not—and cannot—be found, the baptism of William’s father. This more than anything enabled claimants to build houses of cards on the supposition that there were two Roberts, the son of Humfrey Jennens of Erdington and another, the father of William the Rich. The most elaborate is given in *The Great Jennens Case*, which postulates: ‘[b]y a singular coincidence two of these Robert Jennings resided in London; both of them were married, both died in 1725, both left an only son William, neither of these Williams ever married, both of them left fortunes to various members of the Jennings family; one of them died in 1798, the other in 1803’.<sup>82</sup> Again, it would have been difficult for the Andrews and Hood claims to have ever got started if any entry had been found recording the death of Elizabeth, daughter of Humfrey.

78 Even the experienced agents Smith and Fisher reproduced half-a-dozen newspaper advertisements for next-of-kin of sundry Jenningses with the optimistic remark that ‘it is presumed that nearly all these advertisements relate to the large property left by Humphrey or William Jennings’ (*Report*, above n. 1 at 3). In fact few of them did.

79 There was abundant evidence in the report of the Royal Commission on ecclesiastical courts in 1833. The first book to catalogue their deficiencies, poor preservation and liability to forgery was probably J.S. Burn, *History of Parish Registers* (Edward Sutter: London, 1829). It may be significant that a new and expanded edition came out in 1862.

80 *The Great Jennens Case*, above n. 1 at 187–8 (affidavit of 12 March 1869).

81 Handbill by Joseph Jennings, c.1890; A.E. Kindey to Rev. E.S.B. Whitfield, 21 July 1922, *Jennings Box*.

82 Above n. 2 at 21–2. Singular indeed.

Unaware of the imperfections of the registers, it was not surprising that claimants thwarted by a ‘missing’ entry, invariably one crucial to their descent, or the loss of a whole register should have been apt to conclude that it was the result of deliberate destruction, concealment or alteration on the part of the noble families or, as time went on, by rival claimants. As Harrison and Willis put it, ‘many fraudulent acts have been committed by interested parties, and numerous registers have been falsified, defaced or destroyed’.<sup>83</sup> Likewise much significance was given to inconsistencies in the forms of entry in the registers.<sup>84</sup> Since at least one custodian complaisantly allowed the registers to be taken away for perusal at a tavern over several days by a claimant, while other volumes, especially the Birmingham ones, were repeatedly being examined by interested parties, it would not be surprising if some persons did fall into the temptation to tamper with them;<sup>85</sup> equally, because of the vested interests involved, it would be difficult for a court to accept the parties’ evidence as to entries once seen and transcribed but subsequently lost.<sup>86</sup>

The other obvious primary sources were wills and probates, and both were assiduously sought and collected.<sup>87</sup> However, as the earliest challengers found, they are not usually a good source for pedigrees.<sup>88</sup> Indeed, they sometimes proved positively damaging and then had to be distorted to fit the claimants’ case; as Harrison and Willis did, explaining away the clear statement in John Jennens’s will that his son was dead as a mistake in the confusion of the Civil War.<sup>89</sup> Negative conclusions from the absence of names from wills could be useful—Shadwell V-C was impressed by the silence about Elizabeth Jennens in all her siblings’ and parents’ wills—but they could seldom be conclusive<sup>90</sup> and not every important figure in the story made a will.<sup>91</sup>

83 *Ibid.* at 3, and cf. 16. See also G. Pratt, *Morning Advertiser* (10 April 1857) and F.A. Philbrick QC in *Jennens v Bowater*, *The Times* (5 March 1878). *The Woman in White*, a novel by Wilkie Collins, features such an alteration.

84 E.g. Jennens, above n. 10, on Mary Finch and Felicia Hanmer, and the affidavits in *Martin v Howard*, PRO J4/856/1252, 1794.

85 *Birmingham Morning News* (26 February 1875); *Joyce v Howard*, bill of 26 February 1870, PRO C 15/763/31. At the front of Vol. 5 of the Harborne register is a note that it was given to William Harper in the house of Charles Jennings and returned several months later: information from Clive Jennens.

86 As the Crathorns had to claim: *Birmingham Morning News* (26 February 1875).

87 See the published collection of *Jennings Wills and Administrations at Litchfield, England, 1550–1857* (n.d., ?c.1870), said to contain 290 entries (copy in British Library).

88 Correspondence of Isaac and Elizabeth Perry, 1798–9, quoted in *The Great Jennens Case*, above n. 2 at 63–7.

89 *Ibid.* at 8–9. They also had to explain away Robert’s attesting to the handwriting of Mary Jennens’s will in 1708, *ibid.* at 38–9, 126.

90 (2003) 32(3) *CLWR* at 233. However, as Harrison and Willis pointed out, Mary, Lady Andover was similarly ignored in her relations’ wills (*The Great Jennens Case*, above n. 2 at 126).

91 Most notably, of course, William’s father.

The starting point for most searchers were the obituary notices in the *Gentleman's Magazine* and *Annual Register* and in local newspapers, followed by the account of the family in John Nichols's capacious history of Leicestershire.<sup>92</sup> The Jennens family appeared there because of Soleyman the Magnificent's seat at Gopsall but the entry had no counterpart for other key counties, where, even if a reliable history emerged, its concentration on noble houses and mediaeval origins made it unhelpful.<sup>93</sup> However, where a prominent Jennens/Jennings family did have a pedigree in print, it was natural for attempts to be made to link it, the claimants and William the Rich in one ingenious and sometimes contorted genealogy. A favourite was the Jenningses of Sandridge, Hertfordshire, who became the point of origin for the Castleford claimants,<sup>94</sup> and of course many attempts were made to connect with the Marlboroughs.<sup>95</sup> In the second half of the nineteenth century heralds' visitations and other genealogical materials began to appear through learned and local societies, but these seem not to have been much used on behalf of claimants.<sup>96</sup>

Of course, some families, especially landed ones, had records of their own. We have seen that both the Hood and the Baylis/Willis case depended largely on a religious book and a family bible respectively, and the court was in principle prepared to admit them in evidence.<sup>97</sup> But it was one thing to accept the bible and prayer book of the Fishers, whose provenance back to the date of the important entries was impeccable,<sup>98</sup> and quite another to rely on books which had only been unearthed when proceedings were in contemplation. However, contemporaneous documents such as marriage settlements were in surprisingly short supply, perhaps because of the time that had elapsed before claims were launched; in particular, William's parents' settlement was never produced.<sup>99</sup>

92 Vol. 68(2) at 627 and Vol. 40 at 52 respectively. Nichols drew on his earlier material in *Biographical and Literary Anecdotes of William Bowyer* (London, 1782). Other near contemporary accounts, such as *The Eccentric Mirror* (Vol. 1, 1806), add nothing of genealogical value.

93 See generally Wagner, above n. 63 at 330–4. In particular, there was none for Suffolk until W.A. Copinger, *The Manors of Suffolk* (7 Vols., 1905–11, Vol. I, 1905), which has very little on the Jennenses (see at 11).

94 Pedigree in *Jennings Box*.

95 *Lloyds Weekly Register Newspaper* (12 January 1902) noting that attempts were also made to bring in famous figures such as Soame Jenyns and Constantine 'Dog' Jennings.

96 E.g. the Harleian Society's *Visitation of Warwickshire, 1619* and *Le Neve's Pedigree of the Knights* (Vols. 8, 20, 1871, 1873).

97 (2003) 32(3) *CLWR* 232–3. See also the Withers family bible extracts in *Jennings Box*.

98 Lord Aylesford's affidavit in PRO C 15/763/31 (26 February 1870), and *Miscellanea Genealogica et Heraldica*, 2nd series, Vol. 3 (1890) 109.

99 It is mentioned, with a date of 7 October 1800, in a pedigree drawn up in 1861: Elford Hall Collection, MS 3878/1505.

What claimants used, unfortunately, were the early peerage publications, notably those of Collins, Betham and Kearsley.<sup>100</sup> They drew sinister conclusions from omissions and inconsistencies in these volumes, particularly with regard to the birth of R.W.P. Curzon and the death of Mary, Lady Andover,<sup>101</sup> without being aware that, as a contributor to the *Westminster Gazette* wrote scathingly in 1826, they were riddled with such errors, often repeated in successive editions until the family (if they wished) insisted on a correction.<sup>102</sup> As evidence of deficiencies in the pedigrees of the noble families they were useless.

A great mystery was also made out of the Jennens memorial in Acton church. It was updated in 1805 for Lady Howe to include William the Rich, and when Coleman, who had the stonemason's account, examined it in 1859 he found a discrepancy in the number of letters. Neither he nor anyone else could explain when, why or by whom the alterations had been made, but it all helped to deepen the mystery.<sup>103</sup>

Another source which might mislead the unwary was court records. Seventeenth-century Chancery proceedings involving the Jennens family were very useful (though here again the Willisises had to distort them<sup>104</sup>), but none was found which clarified the later family relations. Of course it later became possible to look at the reports and records of earlier episodes in the litigation, but they could be deceptive. Chancery pleadings, in particular, were notorious for their artificial presentation of a case, and where one claimant had been obliged to aver that the noble owners held the property on trust, later ones did not always understand (or want to) that this was a necessary fiction.<sup>105</sup>

For the most part, however, the claimants had to fill the gaps in their genealogy with oral testimony, usually that of elderly people, and increasingly, as time moved on, second-hand tales. Some were highly circumstantial and their recollections of rich uncles and better times in the past may have had some basis in fact; several of the Jennings families had known prosperity and did have 'rich', or at least better-off relations. All such tales would inevitably come to be attached to William the Rich, and even if they were true, as evidence in a court of law they were flimsy in the extreme.

100 A. Collins, *The Peerage of England* (3 Vols., R. Gosling and T. Wootton: London, 1735); W. Betham, *The Baronetage of England* (5 Vols., Wm. Miller: London, 1801-5); G. Kearsley, *Complete Peerage of England etc.* (London, 1794).

101 See e.g. *The Great Jennens Case*, above n. 2 at 115-16 and Jennens, above n. 10 at 16-18.

102 Vol. 5, at 374-85, reviewing *Debrett's Peerage*. See also Wagner, above n. 63 at 328-30.

103 *The Great Jennens Case*, above n. 2 at 103-7.

104 *Ibid.* at 43-51.

105 See e.g. *Baylis v Howard* (PRO C 16/392/11) and several later actions. See the distorted version of *Willis v Howe* (1893) given by David Jennings, *Midland Counties Express* (6 May 1905).

Most of the evidence was, of course, never tested, for most of the suits, especially the later ones, foundered on the rules about time limits. Claimants and their supporters railed against this, and their inability to probe the weaknesses (as they saw them) of the noble families' titles to the Jennens property. Ironically, the likelihood is that the judges' disposition to cut short hopeless actions actually served to foster others.<sup>106</sup> The Curzon title did have to be proved in Chancery, but only in routine uncontested proceedings before a Master, which, as claimants rightly protested, was hardly conclusive.<sup>107</sup> The Lygon and Howard title to the personalty was able to rest not on their own strength but on the substantive weakness of the claimants or, later, on the Limitation Acts. In the circumstances the Curzon motto, 'Let Curzon hold what Curzon has', was highly appropriate.

## V. The Role of Agents

Even if one keeps a scrupulously open mind about the truth of the challengers' contentions, to judge from the courts' brusque dismissal of one after another, most were surely ill-advised and there must be the suspicion that some of the attorneys and solicitors were encouraging hopeless cases in the expectation of costs. Unfortunately it is hardly possible to probe this suspicion further, although an American agent was certainly able to find a 'counsel' to take one of their cases on a no win, no fee basis and the impoverished Churchstanton Jenningses were prepared to hawk their case around on a one-third or even one-half share basis.<sup>108</sup> The noble families' lawyers certainly felt that Richard Pilcher was an unscrupulous attorney who sought to scare the aged Lady Andover into offering money to get rid of him and his clients; on investigation they proclaimed him 'one of the shabbiest of the profession'.<sup>109</sup> The only solicitor who made his advice public

106 In the Leigh peerage case Wilde CJ took the opposite course, allowing the full claim to be ventilated and rebutted. Moreover, whereas the Curzon family ignored George Pratt's libels, the Leighs prosecuted a Leamington attorney, Griffin, who persisted in spreading scandalous tales about them, for criminal libel: R. Walton, *Random Recollections of the Midland Circuit* (Chiswick Press: London, 1873) 199; Sir E.C. Leigh, *Bar, Bat and Bit* (John Murray: London, 1913) 112-13.

107 PRO J 4/5892, affidavits of W. Trower, J. Jennings, 4, 15 May 1900. The Church Commissioners examined the Curzon title to a small plot of land Howe was giving for the building of St Barnabas, Erdington in 1820, but as their conveyancing counsel, Bellenden Ker, noted, it was not necessary for such a purpose to examine it with the thoroughness which would be used on behalf of a purchaser: Church of England Record Office, File 19,465, note of 19 January 1821. However, a Master's report of 13 June 1804 refers to George as the 'eldest son': PRO C 38/918. Unfortunately for historians, the Law Officers had advised the Legacy Duty Commissioners that they need not require full proof of the administrators' title to Jennens's estate: Elford Hall Collection, MS 3878/1514a, opinion of 1799.

108 Jennings, above n. 39 at 3, Augustus Jennings to Lycurgus Jennings, 22 May 1848; Franklin, above n. 6 at 4, letter of John Jennings, c.1855.

109 Elford Hall Collection, MS 3878/1509, J. Hill to R. Howard, 9 October 1801.

was A.J. Head, retained by J.C. Jennens despite the ignominious failure of his strategy in his father's case. Head's letter to the Birmingham meeting is artfully cagey and while offering encouragement is careful not to stray beyond the bounds of discretion.<sup>110</sup> His tactics once again proved ineffective but he was one who must have done very well out of the claimants.

In some of the American cases it would be difficult to distinguish between unjustifiable optimism based upon unfamiliarity with English law and practice and downright roguery, but suspicion certainly attaches to Sydney L. Geiger, with his enticing talk of millions upon millions of dollars and a host of castles.<sup>111</sup> In England several claimants alleged that they had been defrauded by a lawyer, but these stories—how the Martins' proctor decamped with their documents, how the Dangerfields' solicitor went off with documents and £200, how the Yorkshiremen of 1810 had theirs sell them out to Earl Howe—must be viewed with considerable scepticism, especially as none names the culprit so they cannot be tested.<sup>112</sup> What is more likely is that lawyers on both sides of the Atlantic played the part of Mr Vholes in *Bleak House*, always encouraging but never committing himself to a definite opinion.

Of course, at a lower level of society there were out-and-out crooks who preyed on the gullible. In 1872 two men, William Hobbs and William Trevor, toured the Birmingham district claiming to have been sent by the Lord Chancellor to investigate the whole Jennens claim. They collected three-quarters of a hundredweight of documents and were convicted of obtaining £11 by false pretences from a Wolverhampton straw and manure merchant; it is an indication of their success that there were said to be 70 people willing to prosecute them.<sup>113</sup>

Other, more subtle, villains formed the less reputable element in the little explored profession of commercial genealogy. Genealogy and heraldry had always traded on snobbery and pretension (the Jennenses had not been very scrupulous in setting up their coat of arms back in the seventeenth century<sup>114</sup>) and even the members of the Heralds' College had not been above some dubious practices.<sup>115</sup>

110 *Birmingham Morning News* (3 March 1875). He attended the adjourned meeting in person, *ibid.* (18 March 1875).

111 *American Weekly*, 1928.

112 Dunstan, above n. 1 at 28; *The Family Brief*, in *Jennings Box*; Clinton, above n. 30 at 12. In the light of the correspondence of the Howards in Elford Hall Collection MS 3878/1508g, the Martins' excuse for their 1817 failure is false.

113 (1872) 7 *Law Journal* 618. This incident achieved widespread notoriety; see e.g. *Dougal's Index Register* 7th edn (London, 1885) 148.

114 R. Stanley-Morgan, *The Jennens Inheritance*, 2nd draft (1979), Birmingham Public Library 9–10.

115 Wagner, above n. 63 at ch. 9. For an instance involving the famous Gregory King, see C. Holmes, 'A Misplaced Tomb and the Inadequacies of the Common Law Action of Defamation', Paper to the Aberystwyth Legal History Conference, 2001.

Genealogy had now entered upon a boom time and much of the associated activity was wholly commendable. It included the formation of learned societies, national and local, the publication of state records and family pedigrees, the exploitation of the resources of the new Public Record Office, the writing of county histories and scholarly journals. The ethical standard of the Heralds' College rose under men like Francis Townsend, whose professional ethic would not let him suppress a document unfavourable to his client's pretensions, and outside the college there slowly grew up a small profession of genealogists and searchers, most part-time.<sup>116</sup> However, because, as Wagner remarks, English genealogists tend to be individualists, secretive about their sources and methods, it is not easy to trace their growth.<sup>117</sup> The Society of Genealogists was not formed until 1911, the Association of Genealogists and Record Agents only in 1968, and even the former, strangely, has no published history.<sup>118</sup>

It is in keeping with Dickens's remarkable acquaintance with London trades that he shows us such a man at work, not in *Bleak House* but *Little Dorrit*, also published in the 1850s. He is the rent collector, Pancks, who whimsically describes himself as a gypsy fortune teller.<sup>119</sup> It is Pancks in fact who, with an implausible band of assistants, procures William Dorrit his fortune. But not all agents were so benign. In that same decade the journal *Notes and Queries* exposed 'The Cotgreave Forgeries' of W.S. Spence, who had adeptly wrung money from people flattered to learn that his researches had revealed their connection with an armorial family.<sup>120</sup> He was not alone in his unscrupulousness.

One genealogist can be seen acting in Jennens affairs in the 1850s, James Edward Ross of Sheffield, 'agent and searcher of records', who was representing claimants to several other estates besides.<sup>121</sup> There was nothing suspect about such men *per se*, of course, but on both sides of the Atlantic their activities gave rise to criticism. It may have been speculative solicitors rather than genealogists who were the object of the Attorney-General's (Sir John Campbell) wrath in *Andrews v Beauchamp*, when he referred to 'the facilities, encouragement and pecuniary assistance that were afforded to persons of humble origin by speculative individuals to prosecute specious and

116 Wagner, above n. 63 at ch. 9.

117 *Ibid.* at 351. There is a scattering of 'genealogists', 'searchers' etc. in London directories for the mid-nineteenth century.

118 *Ibid.* at 347–8; M.J. Gandy, 'Employing a Professional Researcher' (1980–2) *Genealogists' Magazine* 232.

119 Charles Dickens, *Little Dorrit* (Penguin: Harmondsworth, 1967) 334.

120 R. Stewart-Brown, 'The Cotgreave Forgeries' (1932–4) 6 *Genealogists' Magazine* 288–93, 370.

121 *Sheffield Daily Telegraph* (5 June 1858); the only J.E. Ross in White's *Sheffield* (Sheffield, 1852) is a painter.

unjustifiable claims in cases like the present',<sup>122</sup> but at the assizes Sir James Scarlett laid into the genealogists: 'the making of pedigrees had, in modern times, become a trade, and the pedigreemongers, with the assistance of old women, endeavoured to make out a claim'.<sup>123</sup> Nearly 50 years later, Harrison and Willis warned against 'pretentious genealogists' and such 'unscrupulous persons'.<sup>124</sup> Joshua Carter, who was on the committee of the Jennings Family Association in the 1870s, may have been a professional 'genealogist',<sup>125</sup> but the most visible is certainly James Coleman, who was a genealogist and heraldic book-seller of Bloomsbury. Coleman advertised his wares on both sides of the Atlantic, trading in pedigrees, wills and suchlike materials; he can be seen advertising for information about the inscription on the Jennens memorial, publishing Jennens pedigrees which purveyed the notion of possible claims, publicizing a letter in which Earl Howe complained of his inability to sell certain ex-Jennens lands and corresponding with one of the Jenningses; whether he had other clients among the claimants is unclear but he was certainly doing his best to whip up interest.<sup>126</sup> He was not alone in that; in 1920 a group of searchers met a man called Wallis who told them he had been on the case for 50 years, for whom is not apparent,<sup>127</sup> and 50 years earlier Hargrave Jennings claimed to have been many years on the case; his researches may not have been disinterested.<sup>128</sup>

Criticism was sharper, and probably more justified, in the USA, where *The New York Times* loosed several broadsides against the practitioners of what it called a very old industry, the art of conning people into pursuing 'estates in the moon' or 'phantom fortunes', mostly in England but occasionally in Holland or elsewhere.<sup>129</sup> As a result of their activities there were families who had become convinced they owned most of Glasgow, others with a similar belief about Leeds, while a third laid claim to a great swathe of Kilburn and Harrow. Some supposed fortunes, notably those of Sir Francis Drake, Chase-Towneley and William Bradford, cropped up repeatedly.<sup>130</sup> At

122 *The Times* (25 April 1833).

123 *Walker v Beauchamp*, *North Staffordshire Mercury* (2 August 1834).

124 *The Great Jennens Case*, above n. 2 at 2.

125 Indenture of September 1876, in possession of Clive Jennings.

126 C.J. Carlisle to Coleman (n.d.) *Jennings Box; Pedigrees of the Jennings Family; The Times* (18 August 1869); *The Great Jennens Case*, above n. 2 at 105–7. A card index of Coleman's collection is at the Society of Genealogists.

127 A.E. Kindey to Mrs Whitfield, 7 July 1923, *Jennings Box*.

128 Letter in *The Times* (20 August 1867). He was a writer on miscellaneous topics with a bent towards eroticism and mysticism, writing e.g. on the Rosicrucians and on 'Phallic Miscellanies'.

129 18 October 1886, 25 February 1877, 31 December 1888. In the last of these it claimed to have exposed one firm of scoundrels.

130 *New York Times* (18 October 1886); *The Times* (17 August 1867); *The Dominion* (8 March 1930). For a recent description of the Drake 'scam' see *The Independent on Sunday* (9 June 2002).

best the agents who encouraged them were inexcusably ignorant, at worst they were rogues.<sup>131</sup>

Not all Americans trusted agents. S.S. Jennings of Virginia scorned one of them, Sloan, as a knave and insisted on going to England himself,<sup>132</sup> but many could not afford to do that and were an easy prey. T.G. Clinton, reporting to his clients in 1852, was a classic exponent of the school, tantalizing his employers with discoveries that fell just short of the proof that one more document, one more visit, one more subscription would surely yield; so, probably, was S.M. Smith,<sup>133</sup> while Lyons, 'agent of a branch of the New York Jennings family', put their chances at nine out of ten.<sup>134</sup> Inevitably, candour and self-interest were often in conflict, as can be seen in the report made by Smith and Fisher in 1863. Smith was so disappointed when he received Fisher's verdict that the attempt to recover the fortune was hopeless that he urged him to undertake further investigations, prompting a brusque retort.<sup>135</sup> One who did persist was Mary Jane Griswold, who had acted for the 'Hector branch' which claimed the triumph of 1891 and was still hard at it nearly 30 years later.<sup>136</sup> It is evident that the warnings of officialdom, the press<sup>137</sup> and sceptical individuals such as W. S. Long often fell on deaf ears.<sup>138</sup> It was probably common for the agents to work for a fixed fee, plus a share of any property recovered; thus Smith and Fisher required \$500 to carry out searches in the USA and a further \$2,000, plus \$12 a day for expenses, and 10 per cent of recovered property; S.A. Cook agreed to go to England for \$2,000, expenses and 10 per cent.<sup>139</sup> The activities of the Americans could also affect English families. Besides the obvious impact of the bustling of several agents in the late 1840s and early 1850s, there is the case of the Jenningses of Churchstanton, whose emigrant son was approached by a 'gentleman' with the exciting news that he might be the inheritor of a fortune and promptly wrote home, setting his family to undertake investigations they could ill afford.<sup>140</sup>

One would like very much to know more about these fomentors of claims and their part in fortune hunting. Even the respected Charles

131 But in fairness they could point out, as J.J. Jayne did in reply to a scathing attack by the celebrated American lawyer Judah Benjamin, that some fortunes were retrieved for his countrymen: (1868-9) 12 *Solicitors' Journal* 867, 892. Benjamin remained sceptical: *New York Times* (30 August 1877).

132 *Jennings Family of Elizabeth County*, above n. 40 at 427, 437.

133 Clinton, above n. 30 at 14; S.M. Smith, *The Will of John Jennens esq., with a Letter . . .* (Camden, NJ, 1859).

134 Smith and Fisher, above n. 1 at 7. Columbus Smith was one of the most successful agents in terms of attracting business. The National Union Catalog lists no fewer than 11 published reports of his.

135 Smith and Fisher, above n. 1 at 8.

136 A.E. Kindey to Mrs Whitfield, 7 July 1923, *Jennings Box*.

137 E.g. *New York Times* (31 December 1888), noting that such warnings had been first issued before the Civil War (23 February 1889); *The Dominion* (8 March 1930).

138 Jennings, above n. 39 at 357-8.

139 Smith and Fisher, above n. 1 at 3-4; *New York Times* (17 March 1878).

140 Franklin, above n. 6 at 3.

Bernau, a founder member of the Society of Genealogists, produced a pedigree for some Yorkshire claimants, including an improbable dictum of Butt J.<sup>141</sup> He was no doubt sincere, and so presumably were George Pratt and George Hampton, who gave energetic support (but probably little cash) to claimants who had convinced them of the justice of their cause;<sup>142</sup> others were anything but.

## VI. Family Associations

Since few individual Americans would be able to finance a search, agents frequently encouraged the formation of family associations which would share expenses, information and, hopefully, the treasure. James Usher, putting himself forward as the respectable face of his profession, denounced the tactics some of them employed:

The agent (generally the promoter) deputed to discover the 'broad acres' on arriving in the 'Old Country', spends most of his time at the Probate and Registry Offices, endeavoring to connect a Testator or an Intestate with a member of the Association. After a prolonged and useless search he returns and makes an alleged 'Report' that is intended to buoy up the hopes of the members; notice of a second meeting is given, and if sufficient funds are raised, another visit to the 'Old Country' is made, another report is issued, and so on, until the funds and patience of the persons interested are exhausted.<sup>143</sup>

The dispersal of an immigrant population meant that this game could be played in several places, sometimes simultaneously, and so it was with the Jennens family. The first association reported seems to have met in Nashville in 1849, 70 persons from eight States, and in the following year there was a 'Jennings Family Association' meeting in Charlottesville, Virginia, with William C. Jennings as its secretary; this may not have been the one which sent delegates to a meeting in Dublin in November 1851 (the report names the chairman and the 'agent'—Col. F.A. Jennings—but not the secretary).<sup>144</sup> Since agents had already spent at least \$1,000 in England on behalf of Connecticut families and one Augustus Jennings was suggesting a further \$5 or \$10 subscription to finance further investigations, one or more other associations may have been in existence for several years by then.<sup>145</sup> There was also one in the Camden area in 1852 and in 1863 the best documented was founded at Walpole, New Hampshire.<sup>146</sup> However, their nature is ephemeral and there are thenceforth only fragmentary traces.

141 (2003) 32(3) *CLWR* at 244.

142 Pratt was a Midlands merchant, Hampton a businessman from Birmingham.

143 Usher, above n. 70 at 25–6.

144 Smith and Fisher, above n. 1 at 27; *Jennings Family of Elizabeth County*, above n. 40 at 434n; Clinton, *Report*, 3.

145 Jennings, above n. 39, Vol. 2 at 2, 3; D.D. Fordyce to D. Jennings, 10 October 1848; Augustus Jennings to Lycurgus Jennings, 22 May 1848.

146 Smith and Fisher, above n. 1 at 3, 24.

The first is in 1877, when 200 people met at Bridport, Connecticut and the same or another organization met at Camden, New Jersey, the following year; the number of 'heirs' in New Jersey alone was said to number 1,835.<sup>147</sup> The founder of the New Jersey Association was reported in December 1888 to have been reduced by disease and poverty to apply to the workhouse, but next February another body sprang up in Camden, unfortunately with the same melancholy fate overtaking its leading light and first president, Isaac Jennings, in 1894, just three years after what was presumably a rival group, the 'Humphrey' branch, had claimed its triumph.<sup>148</sup> It looks from the reports as though similar organizations were still existing in the 1920s and although most of the contemporary family associations are engaged in 'pure' genealogical research, there are cryptic websites which suggest that there may still be those hoping to pervert them into treasure hunting.<sup>149</sup>

In the British Isles it is probable that such bodies were much rarer, but an aside in a letter from Mrs Ann Patrick to Lady Andover shows that one was active as early as June 1800. She wrote that '[t]here is a ridiculous club in this Town endeavouring to make out among them some kind of title to the possessions of the late Mr. William Jennens',<sup>150</sup> and it is curious that in this early stage, when it would still have been comparatively easy to gather necessary information, this is the only known reference to any collective action.<sup>151</sup>

The next traces are around 1830 and are derived from the recollections of old David Jennings. He claimed that a club met in Walsall, Great Barr and Birmingham and had a collection of memorabilia including a circular showing the subscription to be three guineas. The core of this one was the set of people who claimed through the Bloxwich descent, and it may have survived long enough to fund John Jennings's abortive writ of right in 1835.<sup>152</sup>

After a pause there was a renewed burst of activity after 1850. The Dublin meeting has already been noted,<sup>153</sup> there was said to be a club at Colchester devoted to the Martin claim and the false report of his success drew an immediate refutation from another, based in Sun

147 *New York Times* (25 February 1877, 19 June 1879).

148 *Ibid.* (31 December 1888, 23 February 1889, 10 August 1894) and see above, p. 344.

149 At least one website contributor says that her grandfather had received an invitation to take part in such an enterprise: Alice Williams, <http://genforum.genealogy.com/heatland/garden/3393/register> is a peculiar and enigmatic compilation taken largely from the bill in *Willis v Howe*. The object of the creators is not clear.

150 *The Great Jennens Case*, above n. 1 at 70–1, and see (2003) 32(3) *CLWR* at 225.

151 The Birmingham newspapers may have further information.

152 *Midland Counties Express* (6 May 1905). The Wright-Doidge letter also suggests an organization; see (2003) 32(3) *CLWR* 229 n. 85.

153 Above, text to n. 144.

Street, Bishopgate.<sup>154</sup> It may have been this one which attended the Dublin meeting in 1851.

In January 1859 the *Birmingham Daily Post* reported a meeting of 40 or so persons, attended by one of the American agents, Smith,<sup>155</sup> and though it was said that they were claimants through John (Humfrey's brother), the secretary was William Joyce, whose claim was through Joseph. It seems that disunity broke out very soon, resulting in a split into the 'Joyce Association' and a rival 'Jennings Association', the creation of George Hampton, backer of the 'Edward line'. This began promisingly with 100 people meeting at Ludgate Hill and elsewhere but it ran out of funds and disintegrated after a couple of years.<sup>156</sup> Joyce's may have persisted for longer, though he denied any knowledge of such a body when his suit finally came towards a hearing.<sup>157</sup> One must still have been active in the late 1860s, however, for Beauchamp complained that it was a 'blackmailing organization'.<sup>158</sup>

The most formidable organization was the last of them, the brain-child of J.C. Jennens, who arranged a public meeting at the Temperance Hall, Birmingham on 2 March 1875 (continued on 17 March). It attracted 300 to 400 people and elected a committee of ten to manage its affairs.<sup>159</sup> Jennens planned to raise no less than £15,000 through deeds of indenture, and since he subsequently sought a second tranche of funding, he may even have succeeded.<sup>160</sup> At all events, it was a considerable achievement to have 'brought together upwards of 200 other claimants from different branches of the family'<sup>161</sup> for this purpose. The acute disappointment at the abrupt dismissal of *Jennens v Bowater* in 1878, however, probably brought about the rapid collapse of this ambitious undertaking.<sup>162</sup>

The glimpses we have of these English societies show them to be an exotic offshoot of the thrift clubs and self-help organizations so thoroughly commended by 'respectable' Victorian opinion. J.C. Jennens's venture was essentially a business one but the earlier ones seem to have had a social side too. The Old Bell, in Spon Lane, where one of them met, had an upper room 'decorated with pedigrees' and the

154 *Birmingham Morning News* (11 February 1875); (1852) 38 ns *Gentleman's Magazine* 114.

155 Probably Sampson M. Smith, who presented a report to his employers later in the same year (*The Will of John Jennens etc.*, above n. 133).

156 *Birmingham Morning News* (11, 15 February 1875).

157 PRO C 15/673/31, reply to interrogatories.

158 PRO C 16/392/11, answer to Baylis's bill, 16 June 1868.

159 *Birmingham Morning News* (3, 18 March 1875).

160 *Ibid.* Deed of 17 March 1875 in the possession of Clive Jennens. David Jennings recollected only £1,700 being raised (*Midland Counties Express* (6 May 1905)), but may have been referring to another attempt, since he locates the meeting at the Albion Hall, London Wall, c.1873.

161 Deeds of March 1875, September 1876.

162 See (2003) 32(3) *CLWR* at 240-1.

poor who met there brightened their lives with talk of the carriages they would one day have.<sup>163</sup>

Such conviviality, however, could quickly turn sour. To attract sufficiently widespread support and funds, an association had to attempt something rather delicate, accepting as many claims as possible even when they were mutually incompatible; thus J.C. Jennens's publication of 1874, as well as embracing descents from Abraham, Edward, Joseph and John, keeps open descent from Henry, Humfrey's son who died in childhood, because some Americans were known to claim through him.<sup>164</sup>

This enforced credulity inevitably caused strains, leading to the break-up of the association of 1859. As Abraham Rhodes, a veteran of these meetings, recounted, consumption of alcohol contributed its share to outbreaks of theft and destruction of papers, trickery and fraud, even extending, he claimed, to threats of defenestration. And all, of course, ended in failure.<sup>165</sup>

Unless their papers turn up, it is impossible now to know how much money these associations raised, or how much they and individual claimants spent in the pursuit of the fortune.<sup>166</sup> Global figures of nearly £100,000 and £250,000 are mere guesswork<sup>167</sup> and the \$50,000 attributed to a Philadelphia woman probably has no basis in fact.<sup>168</sup> At the other end of the scale George Meek spent £100 sorting out his family tree and sensibly did not pursue his fancy that there was a connection with William the Rich.<sup>169</sup> Several of those who did ruined themselves. Even if we discounted several different family traditions to this effect<sup>170</sup> there are the well-attested bankruptcies of William Joyce and George Willis, who claimed at his hearing to have spent £20,000 on the case.<sup>171</sup> This seems an exaggeration (though if correct it would make plausible the \$30,000 one American family owned up to<sup>172</sup>), since the costs of the law suit for which Beauchamp bankrupted Isaac Martin came to only £279, though these of course did not include what he had spent on his own lawyers.<sup>173</sup> Martin did not hire the best, but some of the learned counsel who appeared for plaintiffs in earlier actions—and those for their opponents, whose costs they also had to bear when they lost—would not have come cheap.

163 *Birmingham Morning News* (15 February 1875).

164 *The Jennens Case*. See n. 10 above.

165 *Birmingham Morning News* (15 February, 3 March 1875). The *New York Times* (31 December 1888) claimed that no such association had ever succeeded.

166 According to Smith and Fisher, above n. 1 at 7, the Dublin association had raised £3,000.

167 *The Great Jennens Case*, above n. 2 at 1; (1915) 11 (February) *The Dickensian* 1.

168 *New York Times* (17 September 1892).

169 Cruickshank, above n. 12 at 3.

170 E.g. J. Fletcher to C. Jennens, 14 January 1994; information from Mrs. Laura Sansom.

171 (2003) 32(3) *CLWR* at 238, 245.

172 Jennings, above n. 39 at 507 (Isaac Jennings).

173 *Martin v Beauchamp* (1884) 25 Ch D 12 at 13.

## VII. Conclusion

The frequently expressed view that the Jennens case was fictionalized by Dickens as *Jarndyce v Jarndyce* is seriously misleading.<sup>174</sup> When he began writing *Bleak House* in November 1851 the Jennens litigation had been dormant for fifteen years and it is highly improbable that the cases of the 1830s had lodged in his memory. There is no warrant for the assumption that because he mentioned (not by name) the Jennens and Day cases as examples of Chancery scandals when defending his attack on the court after publication, he had those in mind when planning the novel.<sup>175</sup>

There is, it is true, one important similarity: as in *Jarndyce* there was a host of potential inheritors irresistibly fascinated by their elusive dream of wealth only attainable through the court. But there is a crucial difference too: *Jarndyce* has the characteristics of an administration suit, with a fund trapped in court and relentlessly eaten away in costs until entirely consumed. Neither it, nor the innumerable parties, could escape the court's clutches, though really strong-minded men like John Jarndyce could ignore it. In Jennens there was no such fund, no ongoing case and the deadly refrain of 'costs in the cause' did not echo down the years.<sup>176</sup>

It is certainly possible that Dickens cited the case because he was misled by the curious episode in 1852 in which the press first proclaimed that the case had been settled in Joseph Martin's favour, then retracted in terms which implied that it was still actively in progress.<sup>177</sup> That, however, is a far cry from the close identification of the factual and the fictional case that is sometimes made. In fact what happened almost reverses the conventional wisdom, for when publicity was given to the Jennens case after the appearance of the early numbers of *Bleak House* it was said that the real case resembled the fictional one.<sup>178</sup> It has also been suggested that Wilkie Collins drew on the allegations of impersonation and forgery for *The Woman in White*, which appeared in 1860, but although that seems plausible Collins himself apparently acknowledged that it was a French cause célèbre that gave him the idea.<sup>179</sup>

174 A very error-filled version of the Jennens case, frequently used by later writers, is P. Fitzgerald, *Bozland—Dickens' People and Places* (Davey & Co.: London, 1896) 239.

175 Introduction to Penguin edn (London, 1972). By contrast, the case of Gridley, 'the man from Shropshire' which was introduced in number 5 of the serialized novel, was based on a real (Staffordshire) case: G.C. Baugh, 'The Man from Shropshire' in P. Morgan and A.D.M. Phillips (eds.), *Staffordshire Histories: Essays in Honour of Michael Greenslade* (Keele UP, 1999) 177–99.

176 For similarities to the *Thellusson* case, see G.W. Keeton, 'The Thellusson Will and Trusts for Accumulation' (1970) 21 *Northern Ireland Legal Quarterly* 131–74.

177 (2003) 32(3) *CLWR* at 235.

178 *Ibid.*

179 *New York Times* (17 September 1892); *The Woman in White* (Oxford UP, 1975) Appendix E.

Even Dickens's use of Jennens as a justification for his denunciation of Chancery does not stand examination. Of all the suits which it generated, only *Andrews v Beauchamp*, which lasted nine years and is the only one in the series to feature the sending of an issue from equity to law, which was one of the practices Dickens derided, could possibly serve as an example of unreasonable costs and delays.<sup>180</sup> Even then much more would need to be known about what the costs were and why the delays occurred. Not all delays were attributable directly to the court's own processes; the deference of all courts to 'the courtesy of the bar', which allowed hearing dates to be decided by the engagements of leading barristers (and thereby allowed them to take on even more work) is one 'Spanish practice' that needs more exploration.<sup>181</sup> On what is known, the *Andrews* monument in the graveyard of Chancery suitors is a very humble one. *Andrews* apart, all the courts involved, including Chancery, seem to have dealt with the Jennens cases with reasonable expedition, perhaps because those in Chancery seldom entered the Master's office, where the worst of the delays occurred. Where cases did drag on—like the Joyce and Martin actions of the 1860s—it was because the plaintiffs were inactive for long periods.

It may nevertheless be thought that the very fact that actions continued to be brought, and were permitted, for more than 130 years after the cause of action arose, reflects discredit on the law or its institutions. Yet there was no uncertainty in the law of inheritance which governed Jennens's estate<sup>182</sup> and the solitary example of a first instance decision being reversed on appeal was on a very minor point, whether security against costs should be required of the impoverished Joseph Martin.<sup>183</sup> Neither the law nor the judges created or encouraged uncertainty.

It is perhaps a fair criticism that one plaintiff, John Jennings, was able to exploit an old real action which might have been abolished much earlier, but the court was uncompromising in its insistence that, if he insisted on using his antique weapon, he must take responsibility for ensuring it did not misfire.<sup>184</sup> Even after 1833 the time limit for the recovery of land was generous—20 years until 1874, thereafter 12<sup>185</sup>—but all the post-1835 actions against Howe were well out of

180 Dunstan, above n. 1 at 29, calls it 'a true monument to chancery practice'. For delays in Chancery at a slightly earlier period see H. Horwitz and P. Polden, 'Continuity or Change in the Court of Chancery in the Seventeenth and Eighteenth Centuries' (1996) 35 *Journal of British Studies* 24–57 at 53–7.

181 For instances of this see E. Garnett, *John Marsden's Will* (London, 1998).

182 Sir Thomas Hanmer urged that the unsigned 'will' drawn up for Jennens by his friend, John Bacon be submitted to 'some man of eminence in the Profession', but admitted it had no legal validity: Elford Hall Collection, MS 3878/1508b, E. Foulkes to R. Howard, 10 February 1799.

183 (2003) 32(3) *CLWR* at 238.

184 (2003) 32(3) *CLWR* at 233–4.

185 J.M. Lightwood, *Time Limit for Actions* (Stevens: London, 1905) 289. The exception for plaintiffs beyond the seas was abolished in 1874.

time and could only get started under the cover of the exception for concealed fraud.<sup>186</sup> It would hardly have been fair or practicable to have no such exception, but we have seen that the judges in Jennens cases consistently gave it a narrow interpretation; indeed they helped to mould the law on this point. Coleridge CJ in *Jennens v Bowater* insisted that the defendants must themselves be complicit in the fraud; Malins V-C, following James V-C, set a daunting standard of due diligence for plaintiffs pleading this exception; and the Court of Appeal in 1893 not only ruled that the running of time commenced by an open usurpation would not be suspended by a subsequent fraudulent one, but further held that once rumours were abroad about the Howe imposture a claimant might easily have discovered the truth of it.<sup>187</sup>

It was the same story with actions to recover the personalty. In this case, the amendment to the 1859 Bill which extended the limitation rule to cover intestacies was made just as several challenges were impending.<sup>188</sup> Once again judges were sympathetic to its aims, ruling that it applied to deaths before the Act and giving no assistance to the attempt to circumvent it by revoking letters of administration.<sup>189</sup>

In fact, with the single exception of Shadwell V-C's grant of an issue to the Andrewses (for which the defendants had only themselves to blame) every significant ruling in every one of the cases went against the claimants; small wonder that George Pratt was disillusioned with the law and wanted to call in sympathetic politicians.<sup>190</sup> While demurrers were permitted they were usually upheld and when they were abolished the power to strike out actions as frivolous and vexatious was freely used. Not only in their decisions but in their remarks judges did everything they could to discourage the plaintiff and other would-be claimants; many would have echoed Malins V-C's words: 'the plaintiff seemed to be a labouring man, and it was a great pity he should have spent his time and money in prosecuting claims which were entirely without foundation'.<sup>191</sup> It was of course ironic that these very decisions, aimed at sparing both sides unnecessary expense, served to keep alive the claimants' hopes by ensuring that the titles of the noble owners were never put to the test, but neither judges nor practice can be blamed for that. And though the law ultimately curbed vexatious serial litigants, it was hardly practicable to devise a law

186 Real Property Limitation Act 1833, s. 26.

187 *The Times* (5 March 1878); *Willis v Howe*, *The Times* (3 November 1880); *Willis v Howe* [1893] 2 Ch 545.

188 Direct evidence for the role of the Jennens case in this clause is lacking. It was not, so far as *Hansard* and *The Times* reveal, debated; the weekly law journals offer no detailed comment and the *Law Magazine and Law Review* (Vol. 10 ns, 1860 at 80ff.), reviewing two commentaries, ascribes it to 'suits by alleged next-of-kin which have particularly vexed successive solicitors to the Treasury'. The allusion to the 'Beauchamp clause' ((2003) 32(3) *CLWR* at 236) is, however, likely to be accurate.

189 *Willis v Howe* (1880-1) 43 TLR 375; *Willis v Earl Beauchamp* (1886) 11 P 59.

190 *Birmingham Morning News* (3 March 1875).

191 *Willis v Howe*, *The Times* (3 November 1880).

which would prevent a succession of litigants from issuing proceedings seeking to relitigate matters decided without their participation.

There remains of course the possibility that the law, however impeccable the fairness of its procedures and the efficiency of their implementation, perpetrated an injustice, that one or more claimants were in fact the true inheritors of the fortune, but it is most unlikely.

Admittedly there does seem to have been something curious about the Curzon family during Richard's minority, but a successful imposture is wildly improbable.<sup>192</sup> There is, however, a lingering doubt about the fate of Elizabeth Jennens. No-one in the Andrews or Hood cases seems to have mentioned the curious fact that Nichols's pedigree, published in 1811, shows her marriage to Jeremiah Smith as they claimed. Assuming that the Curzons of Gopsall did not supply him with that information, it must presumably have come from some member of the Jennens family who believed it. It is untainted by any self-interest or pending litigation and Nichols was a scrupulous and intelligent man, too prudent to risk upsetting influential families by knowingly inserting controversial matter. In view of this, the lack of information about the mysterious Mr Reeve is the more frustrating.

The study of past litigation is a difficult one, in which key areas, namely the motives of litigants, their choice of forum and lawyer, the incidence of costs, are often impenetrable. In modern times inheritance disputes have never formed more than a minute fraction of cases at any time<sup>193</sup> and the Jennens estate disputes are grossly atypical in the number of different claimants and the long time span. However, they do throw a feeble light on some murky waters, on the fomenters of litigation, particularly outside the legal profession, and on a peculiar sort of class action funded by family associations. Moreover, cases of the Jennens sort, where poor men claimed to have been defrauded of their birthright by the wealthy, are less uncommon than might be expected. These claimants, usually spurious, seem to have found it easy to attract sympathizers (Stoneleigh Abbey was invaded by a mob of 400 supporting one claimant), and evidently both fed upon and exacerbated class antagonisms.<sup>194</sup>

192 The oddity is this passage, from Stanley-Morgan, above n. 114 at 22: 'In a petition to Parliament; on behalf of her son, for authority to demolish Jennens' house in Suffolk, [Lady Howel] writes "It is better for Mr. Curzon to reside where his ancestors were respected" there being "other reasons, did not delicacy forbid, why it is very unnecessary to keep up a mansion on the Suffolk estate".' Stanley-Morgan says this was ten years after William's death (so c.1808) but the reference he gives (to *The Complete Peerage*) is plainly wrong and this author has been unable to locate any such petition, nor is it clear why Parliament, rather than Chancery, was being invoked. One wishes Lady Howe had been less delicate.

193 Cases arising out of deceased persons' estates did, however, form about one-third of Chancery's workload in 1818/19: Horwitz and Polden, *Continuity or Change?* n. 180 above at 32-42.

194 Vol. 7, *The Complete Peerage* 569. The accusers of the Leighs in 1848 took their case to W.P. Roberts, a Manchester attorney who specialized in representing Chartists and trade unions.

In the Jennens case at least, the truth is indeed stranger than the fiction. All stories should have a moral, and this one perhaps lies in the words of the song:

there's nothing surer, the rich get rich and the poor get poorer . . .,

or, in more robust Victorian vein:

it's the same the whole world over,  
it's the poor what gets the blame;  
it's the rich what gets the pleasure,  
ain't it all a bleeding shame?