HEREDITARY GENIUS.

THE JUDGES OF ENGLAND BETWEEN 1660 AND 1865.

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THE Judges of England, since the restoration of the monarchy in 1660, form a group peculiarly well adapted to afford a general outline of the extent and limitations of heredity in respect to genius. The Judgeship is a guarantee of their having been gifted with an exceptional share of ability; they are sufficiently numerous and prolific to form an adequate basis for statistical inductions, and they are the subjects of numerous excellent biographical treatises.

I propose in these pages to touch briefly on a few of the results that I have obtained by inquiring into their relationships. These are powerfully corroborative of the views I first expressed, a few years ago, in this Magazine (June and August 1865), in two articles upon hereditary talent and character, and they lend far greater precision to the determinations of hereditary influences than those at which I then aimed. I hope very shortly to publish a volume of a somewhat elaborate and extensive inquiry, in which I shall treat not only of judges, but also of the most illustrious statesmen, commanders, men of literature and science, poets, painters, musicians, divines, and scholars. In the meantime, I publish these pages as first-fruits in the hope they may serve the purpose of familiarizing readers with the sort of arguments upon which I rely, and the tendency of the conclusions to which those arguments irresistibly lead.

If genius be hereditary in the same way that physical strength or feature is hereditary, at least five conditions will necessarily be found to exist. I will state them, and will distinguish them by the letters A B C D and E, for the convenience of after reference. The reader will probably think they are rather too abstractedly expressed, and will find difficulty in understanding them at first sight, but, as he reads on, that difficulty will disappear.

(A) If we divide men of exceptionally high ability into two groups, one of which consists of those that are extraordinarily able, then this group ought to contain the larger percentage of able kinsmen.

(B) If we analyse the families of men of high ability, we ought to find the number of able kinsmen in those families to be enormously larger than it would have been according to the ordinary law of chances, on the supposition that ability was irrespective of descent.

(C) The peculiar type of ability ought to be largely transmitted.

(D) The percentage of able kinsmen should be greatest among those who are nearest to the most eminent member of the family, and it should diminish in each successive grade of remoteness.

(E) The appearance of the man of highest ability in a family should not be an abrupt and isolated phenomenon, but his ability should be built up, so to speak, by degrees, in his ancestry; and conversely, it should disperse itself by degrees in his descendants.

I shall now proceed to show that the results obtained from an analysis of the families of the Judges, affirm the whole of these propositions in the most unqualified manner.

Before producing my facts, let me say a few words in confirmation of what I began by asserting, that the office of judge is a sufficient guarantee that its possessor is exceptionally gifted in a very high degree. No doubt there are some hindrances, external to those of

nature, against a man getting on at the bar and rising to a judgeship. The attorneys may not give him briefs when he is a young barrister; and, even if he becomes a successful barrister, his political party may be out of office for a long period at a time when he was otherwise ripe for advancement. I cannot, however, believe that either of these are serious obstacles in the long run. Sterling ability is sure to make itself felt and to lead to practice; while as to politics, the changes of party are sufficiently frequent to give a fair chance to almost every generation. For every man who is a Judge there may possibly be two other lawyers of the same standing, equally fitted for the post, but it is hard to believe there can be a larger number.

The Judges hold the foremost places in a vast body of legal men. The Census speaks of upwards of 3,000 barristers, advocates, and special pleaders; and it must be recollected that these do not consist of 3,000 men taken at hap-hazard, but a large part of them are already selected, and it is from these, by a second process of selection, that the Judges are mainly derived. When I say that a large part of the barristers are selected men, I speak of those among them who are of humble parentage but have brilliant natural gifts, who attracted notice as boys, or, it may be, even as children, and were therefore sent to a good school. There they won exhibitions and fitted themselves for college, where they supported themselves by obtaining scholarships. Then came fellowships, and so they ultimately found their way to the bar. Many of these have risen to the Bench. Thus there have been 30 Lord Chancellors within the period included in my inquiries. Of these, Lord Hardwicke was the son of a small attorney at Dover, in narrow circumstances; Lord Eldon (whose brother was the great Admiralty Judge, Lord Stowell) was son of a "coal fitter;" Lord Truro was son of a sheriff's officer; and Lord St. Leonards (like Lord Tenterden, the Chief Justice of Common Pleas) was

son of a barber. Others were sons of clergymen of scanty means. Others have begun life in alien professions, yet, notwithstanding their false start, have easily gained lost ground in after life. Lord Erskine was first in the navy and then in the army before he became a barrister. Lord Chelmsford was originally a midshipman. Now a large number of men with antecedents as unfavourable to success as these, and yet successful men, are always to be found at the bar, and therefore I say the barristers are themselves a selected body; and the fact of every Judge having been taken from the foremost rank of 3,000 of them, is proof that his exceptional ability is of an enormously higher order than if the 3,000 barristers had been conscripts, drawn by lot from the general mass of their countrymen.

In speaking of English Judges, I have adopted the well-known "Lives of the Judges," by Foss, as my guide. It was published in 1865, so I have adopted that date as the limit of my inquiries. I have considered those only as falling under the definition of Judges whom he includes as such. They are the Judges of the Courts of Chancery and Common Law, and the Master of the Rolls, but not the Judges of the Admiralty nor of the Court of Canterbury. By the latter limitation I lose the advantage of counting Lord Stowell, brother of the Lord Chancellor Eldon, the remarkable family of the Lushingtons, that of Sir R. Phillimore, and some others. Through the limitation as regards time, I lose, by ending with the year 1865, the recently-created Judges, such as Judge Selwyn, brother of the Bishop of Lichfield, and also of the Professor of Divinity at Cambridge. By beginning at the Restoration, which I took for my commencement, because there was frequent jobbery in the days of earlier history that would have led to untrustworthy results, I lose a Lord Keeper (of the same rank as a Lord Chancellor), and his still greater son, also a Lord Chancellor, namely, the two Bacons. I state these facts to show that I have not picked out a period that seemed most

favourable to my argument, but one that was the most suitable to bring out the truth as to hereditary genius, and which at the same time was most convenient for me to handle.

There are 286 Judges within the limits of my inquiry. Of these, I find no less than 133, or nearly one-half, to have one or more kinsmen of little or no less eminence than themselves. The proof-sheets of my forthcoming volume lie before me, in which these relationships are described at length, and are methodically arranged. For want of space, I am unable to do more than give a few samples of them here, and to request the reader to take the rest upon trust.

It will be well, before speaking of the five conditions, to say a few words on the comparative influence of the male and female lines in conveying ability. I cannot make any comparison between persons in the first degree of kinship, as fathers against mothers, sons against daughters, or brothers against sisters, because they are of different sexes; but I can compare the effects of male and female descent in the second and more remote degrees. It is easy to collate the maternal and paternal grandfathers, the grandsons by the sons and by the daughters, the nephews by the brother or by the sister, the uncles by the fathers' or the mothers' side. I have done this and give the result, with the proviso that the numbers are few, and therefore too great reliance must not be placed on them. I find the paternal grandfathers and the grandsons by the sons' line to be exactly equal in number to the maternal grandfathers, and to the grandsons by the daughters' line, but it is not the same with the rest. There is a great preponderance of nephews and uncles by the male line over those by the female line; indeed, there are three times as many of them. I am inclined to ascribe this partly to the accident of two large families, and partly to the fact that it is not easy to ferret out all the relations by the female side. My earlier calculations, based upon less care-

ful inquiries, gave a still larger falling off of the run of ability in the female line. Notwithstanding these allowances, there is a residue that points to a law that judicial ability passes somewhat more through the male line than through that of the female.

I will now proceed to the conditions. As regards A, there is no doubt that the Lord Chancellors are far superior in average ability to the rest of the Judges. They are the very first class as lawyers, of high rank as politicians, and we may safely say that all England does not afford, on the average, half a dozen men of the same age as the Lord Chancellors with greater ability than they have. As I have already remarked, there have been 30 Lord Chancellors among the 286 Judges. How many of them have had eminent kinsmen? Is it a little short of one-half, as I find to be the case with the Judges generally? No: the proportion is considerably greater. At the lowest estimate, 23 of them have had kinsmen of exceptionally high ability. I shall have occasion to publish all these facts of detail in my forthcoming book; it must suffice here that I should mention a few of the most remarkable of them. They are: 1. Earl Bathurst and his daughter's son, the famous Judge, Sir F. Buller; 2. Earl Camden and his father, Chief Justice Pratt; 3. Earl Clarendon and the remarkable family of Hyde, in which were 2 uncles and 1 cousin, all English Judges, besides 1 Welsh Judge, and many other men of distinction; 4. Earl Cowper, his brother the Judge, and his great-nephew the poet; 5. Earl Eldon and Lord Stowell; 6. Lord Erskine, his eminent legal brother and son the Judge; 7. Earl Nottingham and the most remarkable family of Finch; 8, 9, 10. Earl Hardwicke and his son, also a Lord Chancellor, who died suddenly, and that son's great-uncle, Lord Somers, also a Lord Chancellor; 11. Lord Herbert, his son a Judge, his cousins Lord Herbert of Cherbury and George the poet and divine; 12. Lord King and his uncle John Locke the

philosopher; 13. The infamous but most able Lord Jeffery had a cousin just like him, namely, Sir J. Trevor, Master of the Rolls; 14. Lord Guildford is member of a family that I simply despair of doing justice to. It is linked with connexions of such marvellous ability, judicial and statesmanlike, as to deserve a small volume to describe it. It contains 30 first-class men in near kinship, including Montagus, Sidneys, Herberts, Dudleys, and others; 15. Lord Truro had able legal brothers, one of them being an English Judge. I will here mention, though I do not propose to count, Lord Lyttleton, Lord Keeper of Charles I., on account of his most remarkable family, some of whom fall within my limits. His father was Chief Justice of North Wales, who married a lady the daughter of Sir J. Walter, the Chief Justice of South Wales, and also sister of an English Judge. She bore him Lord Keeper Lyttleton, also Sir Timothy, a Judge. Lord Lyttleton's daughter's son (she married a cousin) was the Sir T. Lyttleton, the Speaker of the House of Commons.

There is, therefore, abundant reason to conclude that the kinsmen of Lord Chancellors are far richer in natural gifts than those of the other Judges.

Next, as regards the test B, I find that the 133 English Judges who have eminent legal relations may be grouped into 95 families; and that the 95 families may be divided into the following classes:—The first consists of 38 families containing each 2 persons of distinction, namely the Judge and 1 kinsman; the second consists of 40 families, containing each 3 persons of eminence, namely, the Judge and 2 kinsmen; the third, of 6, containing each 4 or 5 persons of eminence; the fourth, of 5, containing each 6 or more. There are 4 more families that I cannot rightly classify, for they run into others, and do not form isolated groups, namely, the Norths and Montagus, Earl Somers from his connexion with the Yorke family, and the Hon. Heneage Legge from his connexion with that of Finch. I beg the reader to pay especial regard to this

sequence of figures: 38 cases of two eminent men in one family, 40 cases of three, 5 of four or five, and 6 cases of six or more; and to compare it with what we should have found if the occurrence of ability had been a fortuitous event, wholly unconnected with the breed. Suppose, for the sake of an easy round number, we say that it is 10 to 1 against a man of judge-like ability being born in any one family. The real odds are far greater than that; but we will let the figures stand as 10 to 1, merely for the sake of illustration. On this supposition there would be found only 1 family in 100 that contained 2 eminent men, 1 in 1,000 that contained 3, and one in 1,000,000 that contained 6. It is therefore evident beyond the possibility of doubt, that ability is not distributed at hap-hazard, but that it clings to certain families.

We now proceed to the proposition C. If genius be hereditary, as I assert it is, the characteristics that mark a Judge ought to be frequently transmitted to his descendants. The majority of Judges belong to a strongly marked type. They are not men who are carried away by sentiment, who love seclusion and dreams, but they are prominent members of a very different class, one that Englishmen are especially prone to honour for at least the six lawful days of the week. I mean that they are vigorous, shrewd, practical, helpful men; glorying in the rough-and-tumble of public life, tough in constitution and strong in digestion, valuing what money brings, aiming at position and influence, and desiring to found families. The vigour of a Judge is testified to by the fact that the average age of their appointment in the present reign has been fifty-seven. The labour and responsibility of the office seem enormous to lookers-on, yet these elderly men continue working with ease for many more years; their average age of death is seventy-five, and they commonly die in harness. Now are these remarkable gifts and peculiarities inherited by their

sons? Do the Judges often have sons who succeed in the same career, where success would have been impossible if they had not been gifted with the special qualities of their fathers? The best answer is a list of names. They will be of much interest to legal readers; others can glance them over, and go on to the results.

JUDGES OF ENGLAND, *and other high legal officers, between 1660 and 1865, who were, or are, in the relation of father and son. I mark those cases with an asterisk (*) where the father and son are both of them English Judges.*

*Atkyns, Sir Edward, B.E. (Chas. II.)
Sir Robert, Chief Just. C.P. } Sons.
Sir Edward, B.E. (Jas. II.) }

Atkyns, Sir Richard, Chief Just. N. Wales.
Sir Edward, B.E. (Chas. II.)

*Bramston, Sir Francis, Chief K.B. (Chas. I.)[1]
Sir Francis, B.E. (Chas. II.)

Coleridge, Sir John, Just. Q.B. (Vict.)
Sir John Duke, Solic.-Gen.

Dolben, Sir Wm. Just. K.B. (Will. III.)
Sir Gilbert, Just. C.P. Ireland; cr. Bart.

*Erskine, T. cr. Lord Erskine, Lord Chan.
Hon. Sir Thomas, Just. C.P. (Vict.)

*Eyre, Sir Samuel, Just. K.B. (Will. III.)
Sir Robert, Chief Just. C.P. (Geo. II.)

Finch, Heneage, L. Ch. cr. E. of Nottingham.
Heneage, Solic.-Gen. cr. Earl Aylesford.

Finch, Sir Heneage, Recorder of London.
Heneage, Lord Chan. cr. E. of Nottingham.

*Forster, Sir James, Just. C.P. (Chas. I.)
Sir Robert, Chief Just. K.B. (Chas. II.)

Gurney, Sir John, B.E. (Vict.)
Rt. Hon. Russell Gurney, Recorder of London.

*Herbert, Sir Edw. Lord Keeper (Chas. II.)
Sir Edward, Chief Just. K.B. (Jas. II.)

Hewitt, James, cr. Ld. Lifford, Just. K.B.
Joseph, Just. K.B. Ireland.

Jervis, ——, Chief Just. of Chester.
Sir John, Chief Just. C.P. (Vict.)

Law, Edw. cr. Ld. Ellenborough, Chief K.B.
Chas. Ewan, M.P. Recorder of London.

*Pratt, Sir John, Chief Just. K.B. (Geo. II.)
Earl Camden, Ld. Chanc. (Geo. III.)

*Raymond, Sir Thomas, Just. C.B.
Robert, cr. Ld. Raymond, Chief K.B. (Geo. II.)

Romilly, Sir Samuel, Solic.-Gen.
Cr. Lord Romilly, Master of Rolls (Vict.)

*Willes, Sir John, Chief Just. C.P. (Geo. III.)
Sir Edward, Just. K.B. (Geo. III.)

*Yorke, Philip, Ld. Chanc. cr. E. Hardwicke.
Hon. Charles, Ld. Chanc. (Geo. III.)

It will be observed that there are no less than ten families where both father and son are English Judges, and the same number of other families where either the father or the son is an English Judge, and the son or the father is a high legal officer. There are five pairs of Judges who are brothers (Atkyns, Cowper, Lyttleton, Powis, and Wyndham), and seven other Judges who had brothers in high legal offices. In short, out of the 286 Judges, more than *one in every nine* of them have been either father, son, or brother to another Judge, and the other high legal relationships have been even more numerous. There cannot, then, remain a doubt but that the peculiar type of ability that is necessary to a Judge, is often transmitted by descent.

As regards the test D, I have distributed the eminent relatives of the Judges according to their kinships to the most important member of each family. This is usually the Judge himself, but it is not invariably so, for the families include some of the most considerable names in English history. There is John Churchill, the great Duke of Marlborough; Lord Clive, the Governor-General who saved India to our rule; S. T. Coleridge, the philosopher and poet; H. Fielding, the novelist; J. Jervis, Earl of St. Vincent, the naval hero; John Locke, the metaphysician; and John Milton, the poet. The crude percentages of the results are, that to each 100 Judges there are the following number of kinsmen who have achieved equal distinction :—2 great-great-grandfathers, 0 great-grandfathers, 12 grandfathers, 3 great-uncles, 21 fathers, 15 uncles, 4 great-uncles' sons, 34 brothers, 11 first-cousins, 26 sons, 13 nephews, 3 first-cousins' sons, 11 grandsons, 2 great-nephews, 1 great-grandson. In reckoning the richness of each order of kinship in ability, we must divide these figures respectively by the number of individuals in each order. The 100 Judges

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[1] I count the fathers of the Judges of Charles II. because the Judges of the present reign are too young to have Judges for sons.
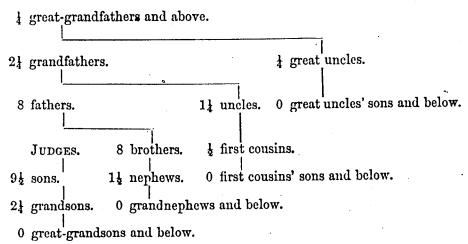
have 200 grandfathers; therefore, the percentage of ability among the grand-fathers is as 12, the crude percentage given above, divided by 2. What are the number of relatives in each order of kinship? I cannot here enter into the question of fertility in connexion with the highest kinds of ability, neither can I go into details about the Judges separately, but am obliged by want of space to confine my remarks to general averages. I find that 23 of the Judges are reported to have had "large families," say consisting of four adult sons in each; 11 are simply described as having "issue," say at the rate of $1\frac{1}{2}$ sons each; and that the number of sons of other Judges are specified as amounting between them to 186; forming thus far a total of 294. In addition, there are nine reported marriages in which no allusion is made to children, and there are 31 Judges in respect to whom nothing is said about marriage at all. I think we

are fairly justified, from these data, in concluding that each Judge is father, on an average, to not less than one son who lives to an age at which he might have distinguished himself, if he had the ability to do so.

I also find the (adult) families to consist on an average of not less than $2\frac{1}{2}$ sons and $2\frac{1}{2}$ daughters each; consequently each Judge has an average of $1\frac{1}{2}$ brothers and $2\frac{1}{2}$ sisters.

From these data it is perfectly easy to reckon the number of kinsmen in each order. Thus the nephews consist of the brothers' sons and the sisters' sons, and are, therefore, $1\frac{1}{2} + 2\frac{1}{2} = 4$ in number. I need not trouble the reader with more of these, suffice it to say I have divided the total numbers of eminent kinsmen to 100 Judges by the number of kinsmen in each degree, and obtain the following most instructive table, which shows the distribution of ability according to kinship:—

PERCENTAGE OF DISTINGUISHED MEN IN THE SEVERAL ORDERS OF KINSHIP
TO THE JUDGES OF ENGLAND.

$\frac{1}{4}$ great-grandfathers and above.

$2\frac{1}{4}$ grandfathers. $\frac{1}{4}$ great uncles.

8 fathers. $1\frac{1}{4}$ uncles.   0 great uncles' sons and below.

JUDGES.   8 brothers. $\frac{1}{2}$ first cousins.

$9\frac{1}{2}$ sons. $1\frac{1}{2}$ nephews.   0 first cousins' sons and below.

$2\frac{1}{4}$ grandsons.   0 grandnephews and below.

0 great-grandsons and below.

I use 0 to express a number considerably less than $\frac{1}{4}$ per cent. and therefore too insignificant to regard.

Thus, out of every hundred persons, who are brothers of Judges, eight have been equally eminent men; and so on for the rest.

The table shows in the most unmistakeable manner, the enormous odds that a near kinsman has over one that is remote, in the chance of inheriting ability. Speaking roughly, the percentages are *quartered* at each successive remove, whether by descent or collaterally. Thus in the first degree of

kinship, the percentage is about eight; in the second about two; and in the third less than half.

The table also fulfils the test E by testifying to another fact, in which people do not commonly believe. It shows that ability does not suddenly start into existence and disappear with

equal abruptness, but rather that it rises in a gradual and exceedingly regular curve out of the ordinary level of family life. There is a regular increase of ability in the generations that precede its culmination and as regular a decrease in those that succeed it. In the first case the marriages have been consentient to its production, in the latter they have been incapable of preserving it. After three successive dilutions of the blood, the descendants of the Judges appear incapable of rising to eminence. These results are not surprising when compared with the far greater length of kinship through which features or diseases may be transmitted. Ability must be based on a triple footing, every leg of which has to be firmly planted. In order that a man should inherit ability in the concrete, he must inherit three qualities that are separate and independent of one another. He must inherit capacity, and zeal, and vigour; for unless these three, or at the very least two of them, are combined, he cannot hope to make a figure in the world. The probability against inheriting a combination of qualities not correlated together, is necessarily far greater than it is against inheriting any one of them.

There is a marked difference between the percentage of ability in the grandsons of the Judge when his sons (the fathers of those grandsons) have been eminent than when they have not. Let us suppose that the son of a Judge wishes to marry: what expectation has he that his own sons will become eminent men, supporters of his family, and not a burden to it, in their after life?

In the case where the son of the judge is himself eminent, I find, out of the 226 Judges previous to the present reign 22 whose sons have been distinguished men. I do not count instances in the present reign, because the grandsons of these Judges are for the most part too young to have achieved distinction. 22 out of 226 gives 10 in 100 as the percentage of the Judges that have had distinguished sons. The reader will remark how near this result

is to the $9\frac{1}{2}$ as entered in my table, showing the general truth of both estimates. Of these 22 I count the following triplets. The Atkyns family as two. It is true that the grandfather was only Chief Justice of North Wales, and not an English Judge, but the vigour of the blood is proved by the line of not only his son and two grandsons being English Judges, but also by the grandson of one of them, through the female line, being an English Judge also. Another line is that of the Pratts, viz. the Chief Justice and his son, the Lord Chancellor, Earl Camden, and his grandson, the son of the Earl, created the Marquis Camden; the latter was Chancellor of the University of Cambridge, and a man of note in many ways. Another case is in the Yorke line, for the son of the Lord Chancellor, the Earl of Hardwicke, was Charles Yorke, himself a Lord Chancellor. His sons were able men: one became First Lord of the Admiralty, another was Bishop of Ely, a third was a military officer of distinction and created Baron Dover, a fourth was an admiral of distinction. I will not count all these, but will reckon them as three favourable instances. The total, thus far, is six; to which might be added in fairness something from that most remarkable Montagu family and its connexions, of which several Judges, both before and after the accession of Charles I., were members. However, I wish to be well within bounds, and therefore will claim only six successes out of the 22 cases (1 son to each Judge, as before), or 1 in 4. Even under these limitations it is only 4 to 1, on the average, against each child of an eminent son of a Judge becoming a distinguished man.

Now for the second category, where the son is not eminent, but the grandson is. There are only seven of these cases to the (226 — 22 or) 204 Judges that remain, and two or three of them are not a very high order. They are the third Earl Shaftesbury, author of the " Characteristics;" Cowper, the poet; Lord Lechmere, the Attorney-General; Sir Wm. Mansfield, Commander-in-Chief

in India ; Sir Eardley Willmot, who filled various offices with credit and was created a baronet ; and Lord Wyndham, Lord Chancellor of Ireland. Fielding, the novelist, was grandson of Judge Gould, by the female line. Hence it is 204 to 7, or 30 to 1, against the non-eminent son of a Judge having an eminent child.

The figures in these two categories are clearly too few to justify us in relying implicitly on them, except so far as to show that the probability of a Judge having an eminent grandson is largely increased if his sons are also eminent. Also it is clear that the sons or daughters of distinguished men who are themselves gifted with decidedly high ability, as tested at the university or elsewhere, cannot do better than marry early in life. If they have a large family, the odds are in their favour that one at least of their children will be eminently success-ful in life, and will be a subject of pride to them and a help to the rest.

Let us for a moment consider the bearing of the facts just obtained, on the theory of an aristocracy where able men earn titles, and transmit them by descent through the line of their eldest male representatives. The practice may be justified on two distinct grounds. On the one hand, the future peer is reared in a home full of family tradi-tions, that form his disposition. On the other hand, he is presumed to inherit the ability of the founder of the family. The former is a real justification for the law of primogeniture, as applied to titles and possessions ; the latter, as we see from the table, is not. A man who has no able ancestor nearer in blood to him than a great-grandparent, is inappreciably better off in the chance of being himself gifted with ability than if he had been taken out of the general mass of men. An old peerage is a valueless title to natural gifts, except so far as it may have been furbished up by a succession of wise intermarriages. When, however, as is often the case, the direct line has become extinct and the title has passed to a distant relative, who had not been reared in the family traditions, the senti-ment that is attached to its possession is utterly unreasonable. I cannot think of any claim to respect, put forward in modern days, that is so entirely an im-posture as that made by a peer, on the ground of descent, who has not been nobly educated, and who has no emi-nent kinsman within three degrees.