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# ST. THOMAS MORE AND LINCOLN'S INN

RICHARD O'SULLIVAN

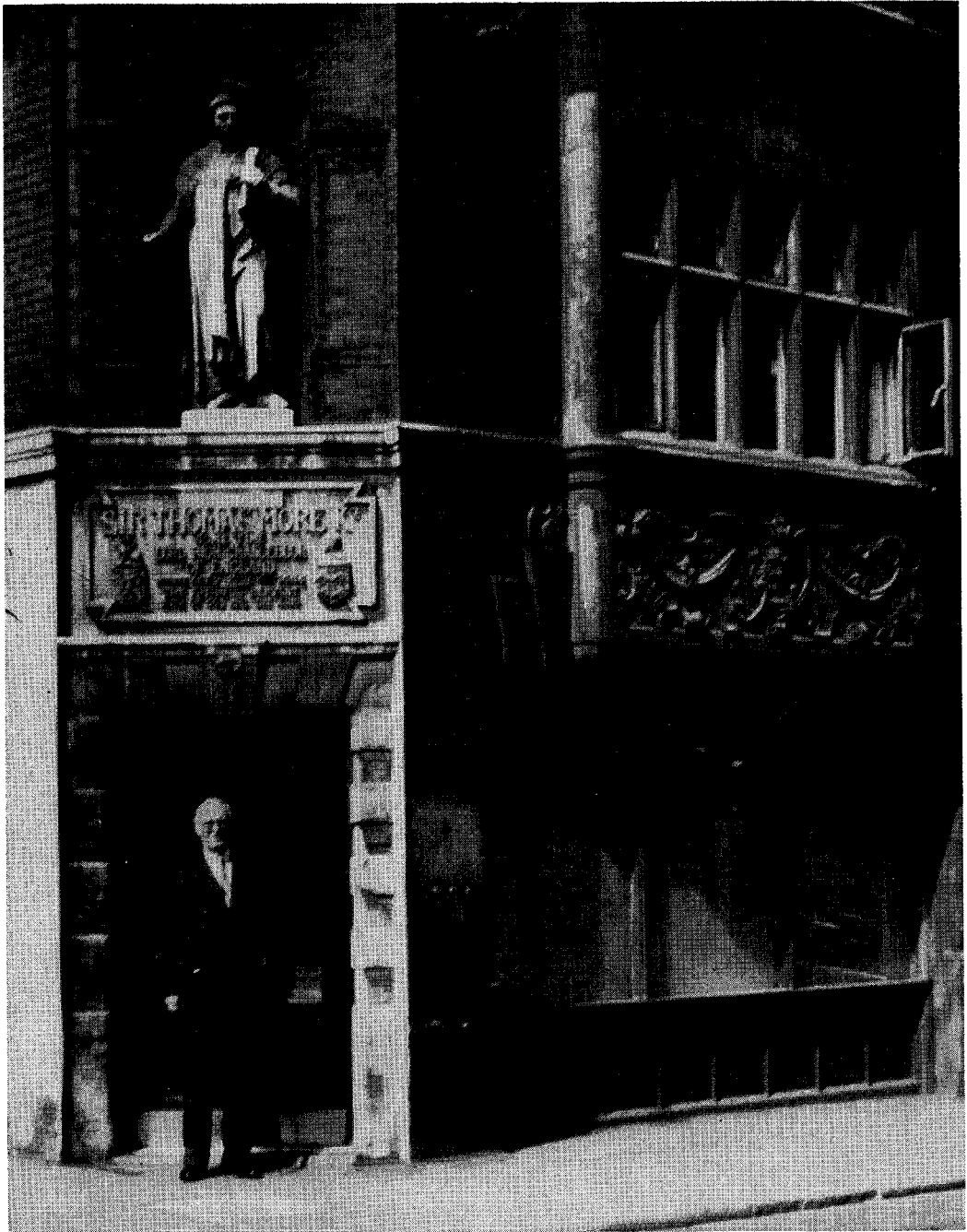
ON HIS RECALL FROM OXFORD where Thomas More had been sent at the instance of Cardinal Morton to study divinity, his father John More entered the boy, now aged eighteen, at one of the Inns of Chancery in London called New Inn. There were at that time some ten Inns of Chancery where young students were given instruction in the liberal arts and the outlines of law and jurisprudence before they sought admission to one or other of the four great Inns of the Court: Gray's Inn, Lincoln's Inn; Middle Temple and Inner Temple. These four Inns were, so to say, four Colleges of one legal University which, in a fine phrase, Professor Lévy-Ullmann has called "the University and Church Militant of the Common law."<sup>1</sup>

The Inns of Court and the lesser Inns of Chancery were situated in the open space between the City of London and the City of Westminster, where Magna Carta had directed that the Court of Common Pleas should have its permanent seat.

In his celebrated work *On the Praise of the Laws of England*, Sir John Fortescue gives a sketch of life in the Inns of Court as he knew it in the fifteenth century:

In these greater Inns, and also in the lesser, there is besides a school of law, a kind of academy of all the manners that the nobles learn. There they learn to sing and to exercise themselves in every kind of harmony; they practise dancing and all games proper for nobles, as those brought up in the king's household are accustomed to do. In the vacations most of them apply themselves to the study of legal science, and at Church Festivals to the reading, after the Divine Office, of sacred and profane literature. There is a cultivation of all virtue and the discouragement of vice, so that barons, magnates and nobles of the realm often place their children in those Inns

<sup>1</sup> LEVY-ULLMANN, THE ENGLISH LEGAL TRADITION 87 (Mitchell transl. 1935).



*The author at the entrance to Lincoln's Inn. The inscription above him is set forth at page 80.*

although they may not desire them to be trained in the science or the practice of the law, but to form their manners and keep them from the contagion of vice. The only way they have of punishing delinquents is by expulsion from the Society, a penalty they feel more than criminals do imprisonment and chains.<sup>2</sup>

Fortescue elsewhere explains that the laws of the land are taught in three languages — English, French and Latin — and cases are pleaded and argued and decided in the royal courts (and reported also) in law-French, so that English law could not be conveniently taught or studied in the Universities of Oxford or Cambridge where the teaching was only in Latin. A man who was called to the Bar by one of the Inns of Court was immediately entitled to lecture and to teach, as Thomas More proceeded at once to do at a dependent Inn of Chancery namely Furnivall's Inn. In fact the Inns of Court were institutions where the older practitioners in the law undertook the instruction of students and "apprentices" — men newly called and not so newly called — and for several centuries the highest office and honour in each Inn was to be appointed Reader, Autumn Reader and, after an interval of four or five years, Lent Reader, who was Head of the Inn as a teaching institution. It was only after the educational character of the Inns had been shaken by the Reformation and brought to an end by the Civil War in the seventeenth century (when all lectures and disputations ceased for a couple of centuries) that the spiritual office of Reader declined and the temporal office of Treasurer attained its present pre-eminence.

Of the Inns of Court Professor Maitland wrote:

No English institutions are more distinc-

<sup>2</sup> FORTESCUE, *DE LAUDIBUS LEGUM ANGLIAE* 172 (Selden ed. 1775).

tively English than the Inns of Court — unchartered, unprivileged, unendowed, without remembered founders, these groups of lawyers formed themselves and in the course of time evolved a scheme of legal education: an academic scheme of the medieval sort, oral and disputatious. For good and ill that was a big achievement; a big achievement in the history of some undiscovered continents.<sup>3</sup>

Elsewhere he speaks of the practitioners before the Courts at Westminster Hall:

We see at Westminster a cluster of men which deserves more attention than it receives from our unsympathetic because legally uneducated historians. No, the clergy were not the only learned men in England, the only cultivated men, the only men of ideas; vigorous intellectual effort was to be found outside the monasteries and Universities. These lawyers are worldly men, not men of sterile caste; they marry and found families, some of which become as noble as any in the land; but they are in their way learned, cultivated men: linguists, logicians, tenacious disputants, true lovers of the nice case and the moot point. They are gregarious, clubbable men, grouping themselves in hospices which become schools of law multiplying manuscripts, arguing, learning and teaching, the great mediators between life and logic; a reasoning, reasonable element in the English nation.<sup>4</sup>

In the light of these words one can understand the language Erasmus used apropos his friend Thomas More in a letter he wrote to one Faber: "He was born in London, their most celebrated city, to be born and educated in which is esteemed by the English to be no small part of nobility (*nonnulla nobilitatis pars*)."<sup>5</sup> One can also understand the language of Sir Thomas Smith, in his inaugural address as Professor of Roman Civil

<sup>3</sup> Maitland, *English Law and the Renaissance*, in 1 *ESSAYS IN ANGLO-AMERICAN LEGAL HISTORY* 199 (1908).

<sup>4</sup> MAITLAND, *CHRISTIAN PHILOSOPHY AND THE COMMON LAW* 13.

<sup>5</sup> HARPSFIELD, *LIFE OF MORE* 303 (1932).

Law at Cambridge in the reign of Queen Elizabeth I, as he exclaimed upon the skill in disputation of the students and apprentices of the Inns of Court, his admiration being excited by the way in which they were apt to handle the dispute when a point of philosophy or theology is brought into question. Again Sir Henry Finch, in his seventeenth century *Description of the Common Law*, explains that the rules of reason are of two sorts: some taken from foreign (*i.e.*, other than legal) learning, both divine and human; the rest proper to law itself. Of the first sort are the principles and sound conclusions of foreign learning:

Out of the best and very bowels of Divinity, Grammar, Logic, also from Philosophy, natural, political, economic, moral, though in our Reports and Year Books they come not under the same terms, yet the things which you find there are the same; for the sparks of all the sciences in the world are raked up in the ashes of the law.<sup>6</sup>

The Inns of Court were thus throughout the Middle Ages one of the chief dynamic centres of English life and thought. Each Inn had its chapel, though the two Temples shared the famous Church which was consecrated for the Knights Templars (*co-militiones Christi et Templi Jerusalemmi*) by Heraclius, the Patriarch of Jerusalem in the year 1185 — at the moment when Hubert Walter was writing down the first Treatise on the Common Law, the book which is called *Glanvill*. The Chapel of Lincoln's Inn was dedicated to Our Lady and to St. Richard, one of the Bishops of Chichester, who owned the land on which the lawyers of Lincoln's Inn established their *hospice*. The other buildings of the Inn included a dining and a lecture hall, and a library which was rich in manuscript including copies of Brac-

ton and Britton and Fortescue and the Year Books. There was also a group of office buildings used for professional and residential purposes.

Lincoln's Inn stood in the angle between what is now the great highway of Holborn and our modern Chancery (or Chancellor's) Lane and was bounded on the west by what are now Lincoln's Inn Fields, and on the south by an open space known as Fickett's Field. The northeast corner of the Inn (the modern Stone Buildings) was taken over from the Black Friars at the end of the thirteenth century; and it is here that St. Thomas Aquinas is reputed to have attended a *studium generale* of the Dominican Order towards the end of his life.

A new Hall (now the Old Hall) of Lincoln's Inn was built in 1489, seven years before young More was admitted as a student of the Inn. The fine Tudor Gatehouse opposite (for the building of which Thomas



Permission of The (London) Times.

Gateway to the Gatehouse.

<sup>6</sup> FINCH, DESCRIPTION OF THE COMMON LAW 6 (1627).

More lent money to the Inn) was begun in 1518 and completed in 1521.

At the turn of the fifteenth-sixteenth century Thomas More was called to the Bar at Lincoln's Inn and, while he was occupied as a lecturer in law at Furnivall's Inn, he went to live without vow at the Charterhouse, a Carthusian monastery. While living there, he gave at the Church of St. Lawrence Jewry his celebrated lectures on the *City of God* of St. Augustine, which were attended by all the learned men of London. Apart from his Augustinian learning it is clear on the testimony of Stapleton and on the evidence to be found in his speeches and writings, for instance in the long letter to Dorpius and in the *Dialogue of Comfort*, that Thomas More was deeply versed in the philosophy of Aristotle and Aquinas and in Christian theology, as indeed were Sir John Fortescue and Christopher St. Germain and Edmund Plowden, and *teste* the autographed copy of his Library Catalogue lately published by Princeton — Sir Edward Coke.

After his call to the Bar the records of Lincoln's Inn and of the City of London and of certain of the City Companies enable us to follow the career of "young More" within his Inn, and as a legal practitioner in the world outside. It is not without interest that the first reference in the records of the Inn to "the keeper of the Black Book" <sup>7</sup> has relation to Thomas More. In 1507 he became Pensioner, a kind of financial secretary; and we read that as Pensioner he seized the goods of a certain Thomas Thwaites deceased, for unpaid dues and ameracements. After being Pensioner, he served as Butler of the Inn as

<sup>7</sup> The Black Book contains the records of Lincoln's Inn. References in the text to this work are from the multi-volume 1897 edition entitled THE RECORDS OF THE HONOURABLE SOCIETY OF LINCOLN'S INN.

his father John More had done before him.

More was now married and living with his wife Jane Colt at Bucklersbury, where his children Margaret, Elizabeth and Cecily had been born. In 1509 his only son John was born, who, like his father and his grandfather, and his brother-in-law William Roper, would in due course become a member of Lincoln's Inn.

The Acts of Court of the Company<sup>8</sup> tell us that on March 21, 1509 "Thomas More Gentleman" was admitted to the freedom of the Mercers' Company "which was granted to him by the whole Company to have it frank and free." In the beginning of 1510 he is reputed to have been chosen (in the place of one Yarford, a mercer, who resigned on becoming Alderman) to represent the City of London in Parliament. In the autumn of the same year, in succession to Richard Brook (author of the Abridgement) who had been appointed Recorder of London, Thomas More was promoted to the minor judicial office of Under Sheriff in the City. In the Michaelmas Term of 1510, Thomas More was elected Marshal of the Inn; and nominated Autumn Reader for 1511. An entry in the Black Book dated February 4, 1511 records that:

... [I]t is agreed by the Rulers and others of the Bench, for that Thomas More was two several times appointed to be Marshal and lettid (prevented) by divers casualties, and for other causes then moving them, the said Thomas shall pay a certain sum to the Company and therefor to be discharged of the keeping of the Black Book and also of the Marshalship for ever; the which sum he paid to the Treasurer in the presence of the said Rulers.

The "divers casualties" are not otherwise

<sup>8</sup> The Acts of Court of the Company deals with the doings of the Mercers' Company, one of the London companies.

defined — it was the year in which his little wife (*cara uxorcula*) Jane Colt died. In Michaelmas Term of 1511, Thomas More, being excused from service as Treasurer on payment of a fine of 20/—, was elected one of the four Governors of the Inn. One may perhaps assume that he was one of the “hoolle bynche” who dealt with the case of Roger Hawkins, Butler, who (according to the Black Book entry dated October 29, 1512) was put out of office for “keeping of women in his Chamber contrary to the good and laudable rules of the house” and was now remitted to his office “soo that he the same Roger do make a Taper of wex, weyng two pounds and to be set up before Our Lady in the Chapel agaynst the Sunday next after Alhalowes Day next comynge.” One may wonder whether Thomas More may not also have been one of those who on July 29, 1513 ordered that “from henceforth no gentleman of Ireland shall be admitted to this Company without the assent of a Bencher, and he shall be at the Masters’ Commons at his first entry, unless he be pardoned thereof by the Governors and Benchers.”

On the Feast of All Saints in 1514, Thomas More, being present as one of the Governors, was elected in regular turn as Lent Reader for the year 1515. Soon afterwards, on December 3, 1514, Thomas More was admitted to the Society of Advocates, which at a later time came to be known as Doctors Commons. At the date of his election, Tunstall, Colet, Grocyn and Bonner were members of the Society which seems to have been used as a kind of Club.

As Lent Reader for 1515, Thomas More achieved the office of highest responsibility and honour that Lincoln’s Inn could offer. He would expound to the whole Inn in the Old Hall over a series of days or weeks the

meaning of some Statute, old or new, or the significance of some leading principle of the common law. Of his Reading there is, so far as one is aware, no note or record, unless indeed Professor Thorne of Harvard, who is occupied in preparing for the Selden Society a second volume of Readings in the Inns of Court, may have unearthed for us some precious scroll.

A Black Book entry states that soon after his Reading in 1515:

... [A]t the suit and instance of the English merchants Thomas More was by the king’s consent appointed as a member of an embassy to Flanders that had to do with certain great causes between the English merchants and the merchants of the Steel Yard.

The City Records for May 8, 1515 contain an entry:

Yt ys agreed that Thomas More Gentleman, oon of (the) undersheryfes of London which shall go on the kinges ambasset in to Flanders shall occupie his Rowme & office by his sufficient depute un tyll his cummyng home agayn.

While he was away in Flanders, Thomas More wrote Book Two of the *Utopia*. (Book One of the *Utopia* was written in the following year, after his coming home again.) In the covering letter to Peter Giles which is a kind of introduction to the *Utopia* there is a passage which describes his daily round during his busy years at the Bar:

While I do daily bestow my time about law matters: some to plead, some to hear, some as an arbitrator with my award to determine, some as an umpire or a Judge, with my sentence finally to discuss. While I go one way to see and visit my friend: another way about my own private affairs. . . . When I come home, I must commune with my wife, chat with my children, and talk with my servants. All the which things I reckon and account among business, forasmuch as they must of necessity be done:

and done must they needs be, unless a man will be a stranger in his own house. And in any wise a man must so fashion and order his conditions, and so appoint and dispose himself, that he be merry, jocund and pleasant among them, whom either nature hath provided, or chance hath made, or he himself hath chosen to be the fellows and companions of his life: so that with too much gentle behaviour and familiarity he do not mar them, and by too much sufferance of his servants, make them his masters. Among these things now rehearsed, stealeth away the day, the month, the year. When do I write then? And all this while have I spoken no word of sleep, neither yet of meat, which among a great number, doth waste no less time than doth sleep, wherein almost half the life time of man creepeth away. I therefore do win and get only that time which I steal from sleep and meat.<sup>9</sup>

Soon after Thomas More completed *Utopia* he was forced to enter the service of the King, and we no longer meet him in the Black Book or the records of Lincoln's Inn. There are however two last entries in the Black Book that throw light on the character of Thomas More. On February 24, 1515 we read that at the instance of Thomas More, then Reader, one Thomas Rysshton, one of the Pre-Notaries of the Sheriff's Court of London, was admitted (on special terms) as a member of the Inn and pardoned four vacations. Rysshton had a distinguished career and in the course of years became a Serjeant-at-Law. The other entry is dated June 24, 1520, after More had resigned his office of Under Sheriff and had become a member of the King's Council. On this occasion, again "at the instance of Mr. Thomas More of the King's Council, and of George Treheyron, the Reader, one Richard Stafferton, a Pre-Notary of the Sheriff's Court of London, was admitted" (again on special terms) as a member of the Inn and pardoned four vaca-

<sup>9</sup> MORE, *UTOPIA* 8 (Everyman ed. 1918).

tions. The event was clearly a source of great joy to Richard Stafferton who "gave to the Inn a hogshead of claret wine." The entry of June 24, 1520 touching the admission of Richard Stafferton is actually the last entry in the Black Book concerning Thomas More, who was now a member of the King's Council and no longer active in the domestic life of the Inn or in practice at the Bar. There is no entry relating to his appointment as Lord Chancellor in 1529 or his resignation of the office in 1532, or his arrest and imprisonment in the Tower in 1534; though we read with interest and not without surprise that in Hilary Terms, 1535, William Roper, the son-in-law of Sir Thomas More, was called to the Bench at Lincoln's Inn. (No meeting of the Council of the Inn appears to have been held between June 24, 1535 and November 11, 1535, between which dates the trial and execution of Thomas More took place.) On November 11, 1535 it was decreed that a Council of the Inn should be held on the following Sunday, November 14:

... [W]hen it shall be agreed when the principal week shall be kept, what day shall be in the stead of Hallowmas (*i.e.*, All Saints) Day; forasmuch as because of death in London, Michaelmas Term was adjourned till *crastino animarum* (the morrow of All Souls), and so no Hallowmas kept this year in this House.

At the meeting of the Council on November 14, 1535 (when Thomas Rysshton, the protégé of Thomas More, was elected Treasurer) the Council decided that "this week shall be the principal week for this Term and that because of the death and many other considerations no solemn Christmas shall be kept." The election of William Roper as a Bencher early in 1535 and the election of Thomas Rysshton as Treasurer indicate that the mind of the Rulers of Lincoln's Inn was not unfriendly to the memory of Sir Thomas



More. Research into the medical history of London has shown that there was in fact a sporadic outbreak of plague in London in the autumn of 1535, though no exceptional measures appear to have been taken at the Inner Temple less than a quarter of a mile away from Lincoln's Inn. "Because of the death and many other considerations, no solemn Christmas shall be kept this year." Was the death of their most distinguished member one of the considerations that the Benchers of Lincoln's Inn had in mind? Could it possibly have been out of their minds? Out of the minds of Rysshton and of Roper? It is, one imagines, a fair inference that the death of Thomas More on July 6, 1535, was one of the matters which moved the authorities of Lincoln's Inn to abandon the solemn Christmas of that year.

In fact throughout the penal times that followed, Lincoln's Inn and its neighborhood continued to be one of the places in central London that were haunted by Catholic recusants. The records of the Inn during the Tudor and the Stuart time contain many entries which show among barristers and students the constant presence (notwithstanding sustained or sporadic persecution) of adherents of the ancient faith. After the Revolution of 1689, at the opening of what we are told was the Age of Toleration, a statute of 7 William III forbade the Inns of Court any longer to call Catholics to the Bar of England. For a whole century until the Relief Act of 1791 Catholic men of law, no longer able to be called *to* the Bar, with the good will of the profession continued to practise in Chambers as conveyancers and special pleaders *under* the Bar. The link with the older times was a certain Nathaniel Pigot who had been called to the Bar before the Disabling Act of William III and who, conforming to the temper of the times, abstained

from advocacy in Court and confined himself to practice in Chambers. He was a draftsman "of consummate skill and conciseness."<sup>10</sup> In the early part of the eighteenth century he was succeeded by another recusant lawyer, James Booth, who has been styled "the patriarch of the modern school of conveyancers."<sup>11</sup> For a quarter of a century Booth "gave the law" to the profession of which he was the recognized head. Among those who read in his Chambers was William Murray, afterwards Lord Mansfield and Lord Chief Justice, a member of Lincoln's Inn, who openly discountenanced prosecutions of Catholics under the penal laws and, taking a leaf out of the book of Edmund Plowden ("no priest, no Mass") at the trial of James Webb in 1768 for unlawfully saying Mass, directed the jury to dismiss the proceeding for lack of evidence of the actual ordination as a Roman priest of the man against whom the charge was made.

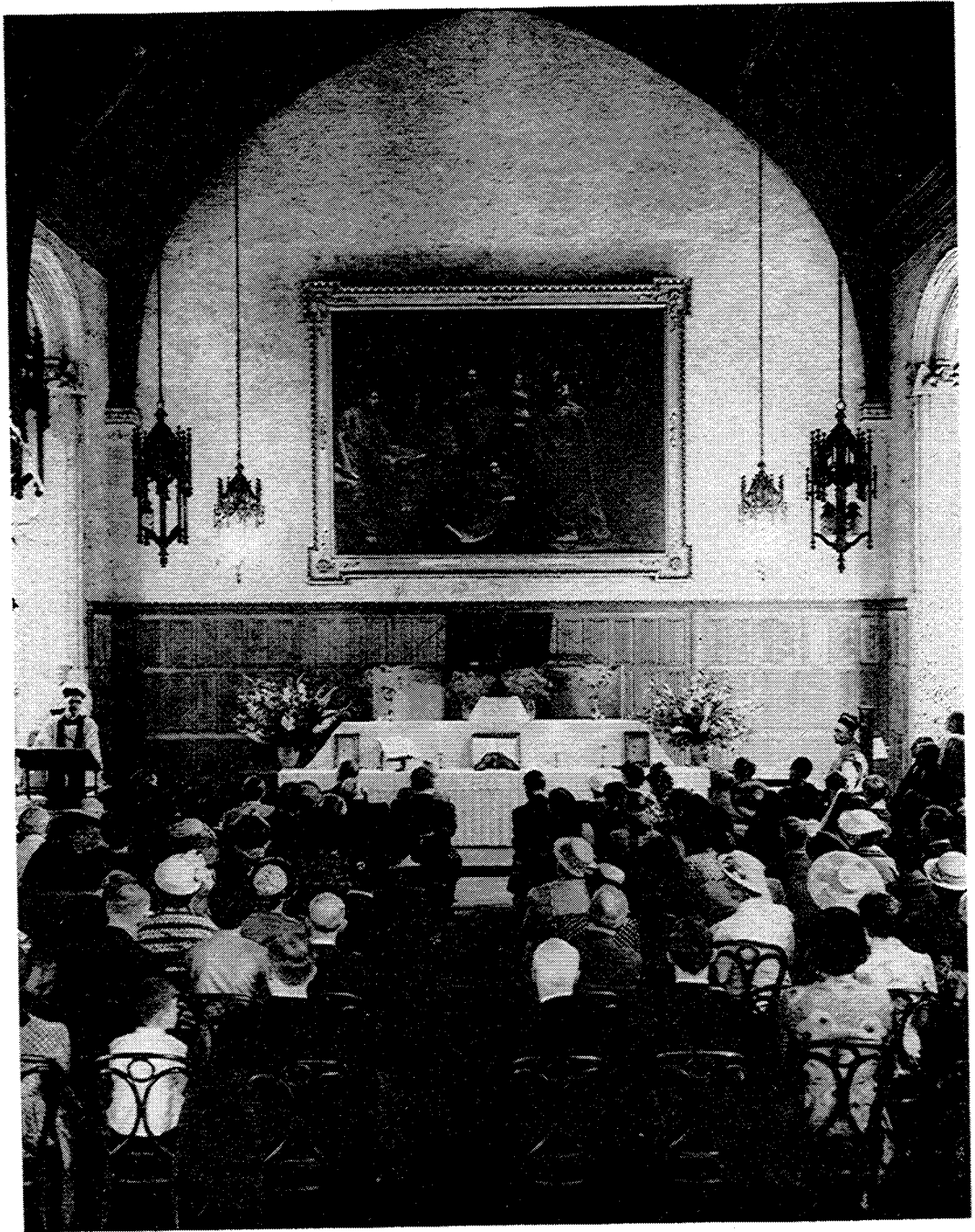
In succession to James Booth two other recusants named Maire and Duane dominated the profession during the latter part of the eighteenth century, and in the language of *The Conveyancer* represent "landmarks in the history of conveyancing."<sup>12</sup> Duane was the master in law not only of John Scott, afterwards Lord Eldon, but also of Charles Butler, editor of the standard edition of *Coke on Littleton*, who had been in practice as a conveyancer *under* the Bar and who was the first Catholic after the Relief Act of 1791 to be called to the Bar by Lincoln's Inn. Within a little time he was joined in the Old Hall by Daniel O'Connell, the Liberator.

After Catholic emancipation in 1829, the name and fame of Sir Thomas More were

<sup>10</sup> BUTLER, 2 REMINISCENCES 274 (1827).

<sup>11</sup> *Ibid.*

<sup>12</sup> 17 THE CONVEYANCER 142 (1932).



*Mass celebrated in Old Hall Lincoln's Inn, 1950.*

honourably served and amply vindicated by members of Lincoln's Inn like Sir James Mackintosh, who wrote what R. W. Chambers has called an "exquisite little biography"<sup>13</sup> of More, and Lord Campbell, who, in his *Lives of the Lord Chancellors*, "could feel only indignation and disgust at an apology for Henry VIII."<sup>14</sup>

It was from the Sardinia Chapel in Lincoln's Inn Fields that in the person of Cardinal Wiseman the Catholic voice was heard again in England by a listening audience which included Brougham and his friends and beyond by the English people. And soon after the Courts had moved in 1882 from Westminster Hall to their new home in the Strand just south of Lincoln's Inn, a statue was erected over a building in Carey Street, Lincoln's Inn, just opposite the barristers' and judges' entrances to the new Court. On a slab beneath the statue is the inscription :

Sir Thomas More, Knight,  
Some time Lord High Chancellor  
of England;  
Martyred 6th July, 1535.  
The Faithful Servant  
Both of God and the King.

<sup>13</sup> CHAMBERS, THOMAS MORE 353 (1935).

<sup>14</sup> CAMPBELL, 2 LIVES OF THE LORD CHANCELLORS 53 (7th ed. 1885).

It was a courteous gesture on the part of the Benchers (who afterwards purchased the building, with the statue) to allow a through passage from Carey Street to New Square, Lincoln's Inn, which is in daily use and called *More's Passage*.

Towards the end of the nineteenth century a member of Lincoln's Inn, Charles Russell of Killowen, became the first Catholic Lord Chief Justice of England since the Reformation. It was his son Frank, Baron Russell of Killowen, one of the Lords of Appeal in Ordinary who presided in the Old Hall of Lincoln's Inn in 1936, immediately after the Canonization, at a celebrated lecture on "The Place of Thomas More in English History and Literature," given by Professor R. W. Chambers in the presence of Cardinal Hinsley and the Treasurer and Masters of the Bench of Lincoln's Inn. On that occasion a vote of thanks to Professor Chambers was offered by Sir Frederick Pollock, a great jurist and a correspondent of Justice Holmes of the United States Supreme Court; it was seconded by Mr. T. S. Eliot, our greatest literary figure.

In these last years through the courtesy of a series of Rulers of Lincoln's Inn a memorial Mass has been said in the Old Hall early in July of each year in honour of St. Thomas More.