

## UNDER THE BAR

THE English Catholic squire of the eighteenth century, when he came to decide on the future of his sons, found his choice a very restricted one. His first-born would, no doubt, succeed to the patrimonial acres; and carry on the old traditions. Another, perhaps, might develop a vocation to the priesthood, and be satisfied with that then very humble, very obscure, and often dangerous calling. But what to do with the rest? and those were the days of large families.

Trade might claim one, and (during the first half of the century, though not so later on) without any loss of prestige, or any injury to family pride. Thus a fourth son of Sir Francis Jerningham, of Cossey, became a well-known goldsmith in Covent Garden; while the younger brother of Alban Butler, although born of an old Northern family of gentle stock, set up in business as a linen-draper in the City. But the cruel penal laws against Catholics altogether excluded them from the public services, the Universities, and the Army. The oaths of supremacy and abjuration put parliamentary life out of the question, and the Test and Corporation Acts closed the municipalities. Finally, the statute of William III forbade Catholics to exercise the professions of barrister, attorney, and notary. Hence the usual career of a younger son was found in foreign lands, and many were the English Catholics who fought for or served the Kings of France and Spain, the Emperor at Vienna, or the princes of the small Italian states.

But curiously enough, there remained one small side-walk of civil life at home that could still be paced by those who were shut out by their religion from the broad highway of English national existence. And of this happy opportunity they took full advantage.

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There was in those days, and for generations afterwards, a class of lawyers, a sort of 'chamber-counsel,' who never went into open court, but who sat all day long in their narrow rooms in Temple or Inns of Court or Chancery, poring over precedents, drawing up involved opinions, drafting many-worded deeds, droning out black-letter learning, and instilling out-of-the-way knowledge into an occasional pupil. These were the Conveyancers, and Special Pleaders. They, like others, had kept the necessary number of Terms and eaten the required dinners that qualified for a call to the Bar. But they were never actually called; instead they took out licences to practice 'under the Bar.'

Now, as no oaths of allegiance and declarations against Transubstantiation were demanded of them, alone among 'counsel learned in the law,' they numbered many Catholics in their ranks, and in course of time this branch of the profession became a regular Papist preserve. Their co-religionists gave them hearty support, and sent them their sons as pupils. In their narrow way, they were men of the profoundest and most curious learning, and their industry brought them much profitable business.

From 1688 to 1791, no Catholic was or could be called to the Bar, but of conveyancing and special pleading they had almost a monopoly. Lord Chancellor Eldon owed his legal education to them, and so did Lord Denman and many another.

These special pleaders were highly respected, and enjoyed great personal consideration, while the prolix verbose instruments they drew up set the precedents for succeeding generations in all dispositions of landed estates and encumbered property. All of them were past-masters in uses, powers, and trusts.

Not for these men were the more splendid prizes of the Law. They could never hope to rival the eloquence of an Erskine at the Bar, never dream of

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sitting beside Mansfield on the bench; but in their own peculiar line they were supreme, and they elevated what might have been a mere barbarous jargon of archaic terms and cumbrous forms to the level of a fine art.

'Conveyancing' (the art of preparing writings which transfer landed property from one set of persons to another) and 'Pleading' (the statement in technical form of the grounds of a claim brought before a court) are very simple matters now, and tend to become still simpler. It was otherwise in the eighteenth century. And to grapple with their complexity, to master their niceties, and to state the rights transferred or the questions in dispute with absolute correctness, avoiding a thousand pitfalls, and doing full justice to one's clients, called for legal intellects of the highest order. These old Catholic practitioners 'below the Bar' seem to have possessed such.

Nor were they all mere pedants and dryasdusts. And when they wrote it was not always a Treatise on Fines and Recoveries, or an Abridgment of Cases Decided. Some were accomplished artists or polite scholars, others had a taste for history or controversy, one took an interest in the liturgy and brought out an edition of the Gospels.

There must have been a good many of them, but very few of their names have been preserved. No one seems to have written much about them. Three or four are to be met with in the pages of the Dictionary of National Biography, and we have discovered traces of others here and there.

James Booth, 'the Father of modern conveyancing,' whose elaborate opinions have often been respectfully cited at the Bar and quoted from the Bench, was one of the best known; Matthew Duane, artist, musician and the most skilful medallist in England, was scarcely less so. The old county families, Maires of

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Lartington, Plowdens of Plowden, and Eyres of Has-sop, figure in the list. William Cruise, the author of the *Digest of the Laws on Real Property*, is also seen there. Then comes 'Mr. Wilmot, of Lincoln's Inn,' who left a large fortune entirely to charity, and was described by his executors as 'a very regular Christian, and moderate and scrupulous in his charges to his clients.' Finally, moving on a wider stage and forming the link between the old order and the new, is the last of the race, Charles Butler.

Much of late years has been said about Butler. Undoubtedly the most distinguished and prominent layman of his period, the most industrious of writers, the first conveyancer of the day, possessed of extensive learning and very considerable literary skill, and withal of the highest character, he lived long enough not only to be called to that Bar from which he and his co-religionists had been so long unjustly excluded, but also to become the first Catholic King's Counsel since the reign of James II.

The Catholic Relief Act of 1791, and the Catholic Emancipation Act of 1829 were the great landmarks of Butler's life, and both were largely owing to his exertions. When they passed into law, the old Catholic monopoly 'below the bar' passed out of existence. Its *raison d'être* was gone.

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