

## CHAPTER II

### A NEW YORK BARRISTER'S EDUCATION

During the seventeenth and eighteenth centuries an English colonial youth of means who planned to acquire a knowledge of the principles of the Common Law and their application, had several well-trod pathways open before him. He could, of course, as most of his friends who were expecting to practice law were doing, become an apprentice to an attorney in his own or a neighboring colony, and serve a regular clerkship. If, however, he desired to temper the rather unattractive and somewhat monotonous grind of a clerk's life with pleasures not obtainable at home, or if he wished to combine travel with study, he could cross the Atlantic and establish a residence in England. There, again, a choice of paths was possible. If his resources were somewhat limited, or if his ambition ran to paper work rather than to courtroom practice, he could enter one of the several Inns of Chancery in London and prepare himself to perform the duties of an attorney or of a solicitor.<sup>1</sup> On the other hand, if he had sufficient money and wished to follow the course tradition decreed an English gentleman of the day must take, he could join one of the four recognized Inns of Court and look forward to the time when he would receive the degree of Barrister-at-Law. Or, finding it impracticable to join either an Inn of Court or an Inn of Chancery, a student could apprentice himself to an attorney in regular practice at Westminster or in one of the more populous cities such as Bristol or Southampton.<sup>2</sup> Whichever course was pursued, there were open to the serious-minded student cultural opportunities in England available in none of the American colonies.<sup>3</sup>

The Inns of Court and of Chancery have long been

established near the Strand in London. Voluntary, non-corporate, legal societies, they had their origin about the end of the thirteenth and the beginning of the fourteenth centuries. One of the earliest references to them occurs in 1292 when, following a canon prohibiting the clergy from acting in the temporal courts, Edward I appointed a commission of inquiry which directed that students "apt and eager" should be brought from different parts of England and placed in proximity to the courts of law then fixed by Magna Charta at Westminster. The youths selected under this command were lodged in societies known even then as Inns of Court and Inns of Chancery. Thereafter, throughout the pages of English history numerous references to these Inns occur. For instance, Sir John Fortescue in his *De Laudibus Legum Angliae* (ch. 49) states that they were the earliest settled places for students of the law. He says that these hostels were nurseries or seminaries of the Court. Altogether he mentions fourteen such societies of "students, practisers or pleaders, and judges of the laws." Four of them—Lincoln's Inn, Inner Temple, Middle Temple, and Gray's Inn—although among the first to have been established, have functioned continuously throughout the centuries, and from the beginning have been accorded a rank superior to the ten Inns of Chancery.<sup>4</sup>

In the early life of these societies only gentlemen were admitted to membership. Although enough of the atmosphere inherent in such an exclusive policy still survived during the American colonial period to attract certain families, a practice of accepting any youth able to pay the prescribed charges had been in effect among the Inns some years prior to 1600.<sup>5</sup> Sons of merchants, particularly, had been accepted for several decades, and to their incursion some commentators ascribe the change in the quality and

outlook of the membership of all the Inns which took place in the seventeenth and eighteenth centuries.<sup>6</sup>

The studies pursued at the Inns were conducted by means of "Readings," "Moots," and "Bolts." From early times Readings were delivered in the halls with much ceremony, and being regarded as authoritative were frequently cited in argument at Westminster. An eminent Benchers would select some statute, or section of a statute, for analysis and elucidation, and explain its relation to the common law. By 1700, however, the position of Reader had become a sinecure, and Readings ceased to have much value. Moots, or exercises in the nature of formal arguments on points of law raised by the students, were also for many years conducted with care in the Halls of the Inns under the supervision of a Benchers and two Barristers sitting as judges. They were considered superior to Bolts, although the two were analogous in presentation and purpose. All three forms of exercise had fallen into complete disuse by the end of the seventeenth century.<sup>7</sup>

Although thereafter the Inns continued to determine who should be "called" to the bar, training for admission was no longer their greatest concern. A languor similar to that which was then affecting the church and the universities of England gradually supervened until merest forms sufficed to confer the dignity of advocate and pleader. Attendance upon Readings and Moots was not prescribed, and neither lectures nor courses of study were regularly given. Indeed, one present-day author in writing of the conditions then existing has stated that by the beginning of the eighteenth century even the very moderate amount of instruction given through the Readings and the Moots had been gradually discontinued, or, because of inattendance by barristers and students, had failed, and that the legal education afforded had

become almost nominal. A student could, if he chose, carry on independent study, but no assistance was given him and no examination was required. He states, in effect, that the Inns were legal societies or clubs rather than law schools.<sup>8</sup> This echoes an opinion which a number of other commentators have expressed. For example, Roger North, who died in 1733, wrote of the Inns as he had known them. He asserted:

"Of all the professions in the world, that pretend to book-learning, none is so destitute of institution as that of the common law. . . . But for the Common Law, however, there are Societies, which have the outward show, or pretence of collegiate institution; yet in reality, nothing of that sort is now to be found in them; and, whereas, in more ancient times, there were exercises used in the Hall, they were more for probation than institution; now even those are shrunk into mere form, and that preserved only for conformity to rules, that gentlemen by tale of appearances in exercises, rather than any sort of performances, might be entitled to be called to the Bar."<sup>9</sup>

Another writer describing the education obtainable at the close of the eighteenth century has remarked:

"There was really no legal education at the Inns of Court in the year 1800. In the days of Queen Elizabeth and James I. regular courses of study were prescribed, attendance at moots and in hall was insisted on, and discipline was vigorously maintained. But that had all fallen into disuse, or lingered only in a few antiquated forms. There were still a few so-called 'exercises.' A student after dining in hall was provided with a printed form of questions. Armed with this, he would tremblingly approach the dais, and say to the first good-natured-looking benchers whose eye he could catch; 'If A were seized in fee of Blackacre.' The benchers smiled and



bowed. The student continued the enunciation of the problem, concluding boldly with these words, which were not on the paper, 'I maintain the widow shall have her dower.' The bencher bowed again and the student retired, having 'kept his exercise.' Any student who had eaten the prescribed number of dinners and paid his fees was made a counsellor-at-law; the ceremony was conducted, like the return of stolen goods, 'without any questions being asked'; he need never have read a single page of any law book. . . .

"Samuel Ireland, in his *Historical Account of the Inns of Court*, published in 1800, 'advert[s]' on page 105 to the 'ceremony of mootying' as 'a custom long since in disuse except in New Inn, where about a year and a half since, we are informed, a mootying took place, to the no small diversion of the passers-by.' . . .

"The students had, in fact, to teach each other. There was in Tidd's office a society which met once a week exclusively for the discussion of legal questions. It consisted of his pupils for the time being, and any former pupils who chose to attend. It was modelled upon the plan of the Courts at Westminster; there was a Chief Justice, counsel for the plaintiff and defendant, etc."<sup>10</sup>

Still another view is that given in 1763 by Charles Carroll of Carrollton, Maryland, while he was a student in London. To his father he wrote:<sup>11</sup> "Nothing can be more absurd than the usual manner of young gentlemen's studying the law. They come from the University, take chambers in the Temple, read Coke [on] Little[ton]: whom they cannot possibly understand, frequent the courts whose practice they are ignorant of; they are soon disgusted with the difficulties and dryness of the study, the law books are thrown aside, dissipation succeeds to study, immorality to virtue, one night plunges them into ruin, misery and disease."<sup>12</sup>

From such pictures it is quite certain that during the eighteenth century the Inns of Court in London had ceased to perform educational functions of a serious nature.<sup>13</sup> No longer were they institutions in which students might expect to receive instruction or guidance in their efforts to master the intricacies of the law. What their members learned was acquired through individual study, by apprenticing themselves to a practicing attorney or solicitor, or from attendance upon the courts, especially those sitting at Westminster. Moreover, the education they received was not only practical, but exclusively and distinctly English in origin and content, and left much to be acquired in the future through study and experience.

However, having conformed to the rules of his Inn, a student eventually petitioned for an examination. As has been seen, the requirements of this for many years, appear not to have been thorough nor even very serious in their nature.<sup>14</sup> The Benchers were satisfied if the applicant had paid all financial obligations and, by eating the requisite number of meals in the Commons of the Inn,<sup>15</sup> had kept his twelve terms.<sup>16</sup> Form, not substance, appeared to suffice, and upon the observation of it, the candidate was certified as qualified to be awarded the degree of Barrister-at-Law.<sup>17</sup>

Although each Inn had authority to award this title of Barrister-at-Law<sup>18</sup> to anyone approved by its officers, it was a distinction reserved almost exclusively for members who had been in attendance the customary seven-year period. Moreover, since this was a degree held by the Attorney General of England as well as by the ordinary practitioners at the bar, it attracted a number of colonials though not especially New Yorkers.<sup>19</sup> In writing of this situation one authority has stated: "The American-born members of the Inns of

Court before the year 1815 number about 236, and of these no fewer than 146 were of the Middle Temple. More than half this number were admitted between 1750 and 1775. The Inner Temple claims 43, Lincoln's Inn 32, Gray's Inn 9, and 6 were members of more than one Inn. To this total South Carolina contributed 74 and Virginia 49, while 29 came from Maryland. Pennsylvania and New York sent 23 and 21 students respectively,<sup>20</sup> and Massachusetts 19.

"Of these, seven only were admitted in the seventeenth century; namely, four from Massachusetts: Stephen Lake to Gray's Inn in 1668, which is the earliest admission to any Inn; and William Wharton in 1681, Benjamin Lynde in 1692, and Paul Dudley in 1697, all to the Middle Temple. The two last were successive holders of the office of Chief Justice of Massachusetts. Three were Virginians: William Spencer, to the Inner Temple in 1685; William Byrd, to the Middle Temple in 1692 and to Lincoln's Inn in 1697; and Benjamin Harrison, to the Middle Temple in 1697.

"None of the other colonies sent students before the year 1700."<sup>21</sup>

Armed with a diploma testifying to his knowledge and proficiency, a newly created barrister was thereafter privileged to practice at the different bars of the courts of Great Britain.<sup>22</sup> Some forty attorneys who had been thus "called" by an Inn of Court, or who had studied at one, practiced in New York within the entire period, 1664-1776.<sup>23</sup> In addition to these were six others who, although listed as having joined an Inn, seem never to have put their professional training to use.<sup>24</sup> The closing years of the colonial era also witnessed several young men with names well-known throughout the colony beginning the study of law in London.<sup>25</sup> Their preparation, however, was completed after they or their families had been banished from the prov-



BOOK-PLATE OF JOSEPH MURRAY

New York barristers at law were proud of their membership in the Inns of Court, London, England. Joseph Murray, who joined Middle Temple on May 12, 1725, commemorated his membership on his Book-plate. Reproduced through the courtesy of Columbia University from one of the volumes in the Joseph Murray Collection, Library of the School of Law, Columbia University, New York City.



ince and after their property had been confiscated. The statutes and social ostracism which prevented these young lawyers from returning to their native land condemned them to remain in England or to migrate to Canada. Their names never appear upon the court records of the new state.<sup>26</sup> Furthermore, a survey shows that four of the barristers in the colony never actually lived in London, although they had been accepted in full standing as matriculated students and had had their names entered on the rosters as if they had completely satisfied the customary regulations. In other words, it would seem that two of the Inns—Gray's and Middle Temple—recognized membership *in absentia*.<sup>27</sup>

This abandonment of the rules, so far as it affected New Yorkers, came at the beginning of the second quarter of the eighteenth century in favor of the young lawyers—James Alexander, Joseph Murray, William Smith, and John Chambers.<sup>28</sup> It must be said, however, that each of these had already acquired a standing at the bar, and was in New York or New Jersey week after week, month after month, attending to his practice and his various interests at the very time it has been supposed that he was studying in London. A most careful investigation covering the year preceding and the three years subsequent to his recorded admission shows that none of these young men could possibly have lived in London for any length of time, certainly not long enough to satisfy the customary regulations governing the occupancy of chambers at any one of the Inns.<sup>29</sup> Thus, it would seem that for a portion of the eighteenth century, if not for the whole of it, the Inns of Court did not require all their members to be in attendance and to live in quarters.<sup>30</sup>

Moreover, when the careers of the twelve native New York lawyers of this period who received their legal education at Inns are reviewed, it is found that not one so

trained ever reached top place in professional standing in the colony.<sup>31</sup> James DeLancey, for example, when in his early thirties, was appointed a member of the Supreme Court of the Province, after the briefest kind of professional experience; while William Hicks, Philip John Livingston, Robert Livingston (1688-1775), and John McEvers practiced only intermittently. James DeLancey, Jr., Peter DeLancey, and Josiah Martin, Jr., appear never to have practiced—at least not so far as the records indicate. The remaining three New York barristers—Philip Livingston, Jr., Walter Livingston, and Joseph Reade, Jr.—had fair practices, it is true, but they never achieved high professional ratings, although each came from an influential family.

As for the English barristers who practiced in New York after 1730, only three can possibly be said to have excelled, and of these, William Corry<sup>32</sup> alone rates high as a lawyer. Daniel Horsmanden was appointed to judicial position shortly after his admission to the bar in 1731 and remained on the public payroll for the balance of his life. Attorney General William Kempe died in 1752 still holding his post. Although neither of these men engaged for any length of time in the general practice of law, it is probable that each influenced the members of his profession as well as the colony's jurisprudence.

It would appear, then, that young men expecting to practice in New York could secure in the colony an education which would prepare them more adequately for their future work than would the training offered at the Inns of Court. Also, by staying at home they could avoid the expense of traveling to and from England and of living there for several years. The prospect of the costs involved might very likely have deterred Americans who, since they hailed from abroad, were under a social handicap and must maintain appear-

Die 16 Decembris 1763

Ma<sup>r</sup>. Josephus Reed filius nati maximus —  
Andree Reed de Stanton in Comitatu Dunelm in  
provincia Nova Jersey in America Armigeri admiffus  
est in Societatem Medij Compli Londini specialiter

Et dat pro fine . . . . .	4 . 0 . 0
pro Hoodo et Impressionibus . . . . .	2 . 14 . 6
	6 . 14 . 6

Matt. Henrick  
Scripsit.

Cop. Exh.  
Theophilus de Tress

Certificate of Admission to Middle Temple, London, England, granted in 1763 to Joseph Reed of New Jersey, and the admission fees he paid. Courtesy of the New-York Historical Society, New York City.



Entrance into y. Temple	£6. 14. 6
Butler's Fee on but <sup>r</sup>	1. 1. 0
Turntable for Breakfast <sup>s</sup>	17. 6
Clerk of y Temple	10. 6
Butler's Fee going into Comm <sup>s</sup>	10. 6
Cook's Do	15. 6
Q. Ann.	10. 9. 6
Commons	4. 4
Rent of furnish <sup>d</sup> Chamber	22
Laundress to mak. B. & g. clean <sup>d</sup>	6.
Porter to clean shoes & brush coat.	5. 5
Wash <sup>s</sup>	18. 10
Door keeper 11. 11. 11 <sup>th</sup> for 11 <sup>th</sup> <sup>th</sup>	1. 1
Q. & H. B.	1. 11
Q. & C. B.	1. 1
Garden Key	5. 5
	10. 10
	44. 4. 4

Entrance Fees and Other Expenses of Admission to Middle Temple paid in 1763 by Joseph Reed of New Jersey. Courtesy of the New-York Historical Society, New York City.

ances. The fees of the Inns alone were considerable. For instance, when in 1763 Joseph Reed of New Jersey joined Middle Temple, he paid an entrance fee of £6:14:6, an initial deposit for the butler of £1:1:0, and upon going into Commons another subsidy to that officer of £0:10:6; in all the sum of £8:6:0. The annual charges were also correspondingly high, totaling £44:4:4.<sup>33</sup> Over a period of five years these fees would amount to a sizable sum. Moreover, since the system of instruction at the Inns of Court had broken down, a knowledge of law had to be secured outside the Inns. The customary method for acquiring this, aside from attendance upon the courts, was in a busy law office<sup>34</sup> where, upon paying a good stiff fee, desk-room might be had.<sup>35</sup> Having satisfied this formality, whatever advantages such a place offered were available to the gentleman-student who had thereby purchased its privileges.<sup>36</sup> Then, too, in addition to the expenses directly attendant upon living at an Inn of Court and studying in the office of an attorney, some students, after 1760, thought it necessary to attend William Blackstone's lectures at Oxford, paying whatever fee he charged. Consequently, when to all such expenditures was added the cost of books and legal supplies plus the expense of living in London with its entertainments and diversions, the reason that more families did not enter their sons at one of the Inns of Court can readily be understood.

That some youths were disturbed by such expense may be seen from a letter written in 1762 by Philip Livingston, Jr. After commenting upon the pleasant and rather solid sort of life he was living, he observed:

"The only circumstance that may be disagreeable, in my present Connection is, that of expences, which I am afraid will be greater, than what my Father at first intended, but I have lately wrote him, that I find it will be impossible for

me to live here, on less than four Hundred & fifty Pounds Ster: per Ann: which undoubtedly is the Case, for the Rent of Chambers being high, the Expences of Servant, Cloaths, & other et cetera's, so many, & so great, that it is absolutely impossible for an American, who has never lived in London, to have an Idea of it."<sup>37</sup>

In the same year that young Livingston was informing his family how expensive he was finding life in London, Peter DeLancey, Jr., was being packed off to attend an Inn. Young Peter was the son of ambitious but none too prosperous parents, and it was hoped the experience would not involve too great a drain upon the family pocketbook. His relative by marriage, John Watts,<sup>38</sup> having undertaken to make some of the necessary arrangements, wrote about this to his old friend, Sir William Baker: "As the Youth is one of a half a Score Children," he stated, "it is meant that he be educated with as much frugality as decency & character will admit of, his Parents hope it may not exceed a hundred Pounds Sterling per Annum at most."<sup>39</sup> Their hope was probably disappointed, for it seems that in those days a student in London was expected to show a certain degree of carelessness in regard to money, or at least such must be the case if he wished to imitate the pace set by certain of his fellow students.<sup>40</sup> Therefore, although the estimate of £450 per annum made by Philip Livingston, Jr., for the support of a student while attending an Inn may have been from fifty to a hundred pounds too high, it did not far overshoot the mark. Hailing from a consequential New York family, and associating with a group of young men in town chiefly for amusement, it is possible that he felt the need of living in a more expensive manner than the average colonial student. At all events, whether the sum involved was three or four hundred pounds, it was an appreciable amount to be set

aside each year and, when weighed in the light of the poor showing made by those practitioners who had returned after several years of study abroad, doubtless influenced parents to place their sons in law offices at home rather than to underwrite the London venture with its uncertain results.<sup>41</sup>

<sup>37</sup>By the year 1700 each of the several Inns of Chancery had allied itself with one of the four recognized Inns of Court, or had been taken under the jurisdiction of one of them. Despite this fact, no right was recognized whereby a youth studying at an Inn of Chancery to become a solicitor could avail himself of the privileges of the Inns of Court. To join one of these, and to receive its benefits, a prospective member had to follow the regular procedure. The Inns of Chancery performed two services—they prepared attorneys and solicitors, and they were preliminary training schools for the Inns of Court. In them, students "for the greater part, young men, learning the first elements of the Law; and becoming good proficient therein, as they grow up, are taken into the greater Hostels, which are called the 'Innes of Court.'" (Dugdale, *Origines Juridicales*, 143.) "In 3 & 4 Ph. 4 M. (23 Maii) there was an Order made, that thenceforth no Attorney, or Common Solicitor, should be admitted into this House [Inner Temple] without the assent and agreement of their Parliament. And in 5 Eliz. (19 Nov.) it was also ordered, that none should thenceforth be admitted of this Fellowship and Company . . . except he were the son of one of the Bench or Utter-Barr; or except he were and had been by the space of one whole year of the Company of one of the Innes of Chancery belonging to this House." (*Ibid.*, 147. See *Ibid.*, *passim*, for similar rules in the other Inns of Court.)

Joining one of the Inns did not necessarily mean that the student intended to remain for the full number of years or to complete the full course of study prescribed. Especially was this true of boys from the colonies, who since they did not intend to practice in England, returned home after having but partially satisfied the rules fixed by the different societies. They had little need for the degree of barrister, and certain of them were somewhat indifferent to being "called." (See K. M. Rowland, *Life of Charles Carroll of Carrollton* . . . , I, 49, for Charles Carroll's attitude on this matter.) Apparently students from England were expected to serve the full twelve terms, which was the customary period of study. Few New York young men were "called," but the case of Joseph Reade, Jr., is of interest. On May 5, 1762, he was "called," having sent in a petition to Lincoln's Inn "setting forth that he is desirous of being called to the Bar this term, having kept commons, performed all his exercises, and conformed himself to the rules of this Society, wanting two terms of his full standing, that he is a native of New Yorke in North America, and that it is necessary for him to go thither immediately, which he intends to do, and reside there." He was requested



to pay five years' duties, and was "called." (E. A. Jones, *American Members of the Inns of Court*, 182.)

See Bibliography herein for books, manuscripts, and papers mentioned in this study.

<sup>1</sup>Possibly a fourth way was open, for parents sometimes placed very young sons in an Inn of Chancery in order that they might grow up in the law. (Dugdale, *op. cit.*, 143; also Fortesque, *De Laudibus*, ch. 49.) No New Yorker, however, is known to have joined an Inn of Chancery.

<sup>2</sup>The earliest law school in New York was maintained by the blind legal scholar, Peter Van Schaack (King's College, 1767) in his spacious home at Kinderhook, Columbia County. It was founded in 1786, and in it more than one hundred students were trained. Among these were the sons of James Kent, Ambrose Spencer, Theodore Sedgwick, Rufus King, and William Van Ness. The school was still operating in 1830. Daily systematic instruction was given, a feature offered in no attorney's office anywhere in the colony. (For an account of this school see Henry C. Van Schaack, *Life of Peter Van Schaack . . .*, *passim*, especially pp. 443-4.) Not far away, in Litchfield, Connecticut, was Judge Reeve's law school, The Litchfield Law School, which was opened in 1784, and continued until 1833. This was undoubtedly the best law school in North America, and it had an illustrious history. Students came to it from every part of the country, particularly from the South. See *The Litchfield Law School, 1784-1833*, Reprint of 1900 from *The Litchfield Enquirer*, Litchfield, Connecticut. Although a professorship of Natural Law had been established at King's College in 1773, little came of it. The Kent Professorship of Law was created in 1826 at Yale, and in 1830 Nathan Dane endowed a new professorship of law at Harvard, with Joseph Story as its first incumbent.

<sup>3</sup>For full accounts of the Inns of Court and of Chancery see Fortescue, *op. cit.*, chs. 49-50; and Dugdale, *op. cit.*, 141-335. Although it is admitted that the Inns have always stood on a footing of equality, no priority being conceded to nor claimed by one over another, nevertheless, from earliest times an interchange of fellowship has been sustained between Middle Temple and Lincoln's Inn, and Inner Temple and Gray's Inn, these four also maintaining rather close connections one to the other. Serjeant's Inn was a society composed only of Serjeants-at-Law, and it ceased to exist in 1877, upon the abolition of that order. Various Inns of Chancery have existed, of which the more important appear to have been Clifford's, Clement's, New, Staple's, Barnard's, Lyon's (demolished as recently as 1868), Scropes', and Chester or Strand, long since nonexistent. King's Inn, Dublin, the legal school in Ireland, corresponded closely to the Inns of Court in London. Formerly two years of study at the latter were required of all members of King's Inn. The Faculty of Advocates in Edinburgh, Scotland, resembled to some extent the Inns at London, but differed in usages, customs, and discipline. The Inns have a long history, and to each have belonged illustrious personages. Middle Temple and Inner Temple formerly were seats of the famous monastic order known as "Knights Templars," which was suppressed around 1312.

<sup>4</sup>To meet this situation it was ordered in 1603: "We, having received the Kings Majesties Pleasure and Express Commandement, by the Right Honourable Sir *John Popham* Knight, Lord Chief Justice of *ENGLAND*, and the rest of the Judges, that none be from henceforth admitted into the Society of any House of Court, *that is not a Gentleman by descent*; do now therefore order, that from henceforth none shall be admitted to this Society [Lincoln's Inn] contrary to the said Commandement of the King's Majesty." This order was signed by Justices Edward Coke, Tho. Flemynge, John Brograve, Francis Bacon, and Myles Sands. Dugdale, *op. cit.*, 316-7.

Sir John Fortescue, Chief Justice as well as Chancellor to Henry VI (1422-61), writing of the students and legal education of his day stated:

"But, my Prince, that the method and form of the study of the law may the better appear, I will proceed and describe it to you in the best manner I can. There belong to it ten lesser inns, and sometimes more, which are called the Inns of Chancery; in each of which there are one hundred students at the least; and in some of them, a far greater number though not constantly residing. The students are for the most part, young men; here they study the nature of Original and Judicial Writs, which are the very first principles of the law: after they have made some progress here, and are more advanced in years, they are admitted into the Inns of Court, properly so called; of these there are four in number. In that which is the least frequented, there are about two hundred students. In these greater inns a student can not well be maintained under *eight and twenty pounds* a year: And if he have a servant to wait on him (as for the most part they have), the expense is proportionably more for this reason, the students are sons to persons of quality; those of an inferior rank not being able to bear the expenses of maintaining and educating their children in this way. As to the merchants, they seldom care to lesson their stock in trade by being at such large yearly expenses. So that there is scarce to be found, throughout the kingdom, an eminent lawyer, who is not a gentleman by birth and fortune; consequently they have a greater regard for their character and honour than those who are bred in another way. . . . I need not be particular in describing the manner and method how the laws are studied in those places, since your highness is never like to be a student there. But I may say in the general, that it is pleasant, excellently well adapted for proficiency, and every way worthy of your esteem and encouragement." (Fortescue, *op. cit.*, 187-194.) Serjeant Alexander Pulling, in his *The Order of the Coif*, pp. 153, 158, thinks that chapters 48 and 49 of *De Laudibus* were not written by Fortescue but were added some hundred years later—just before publication (c. 1537). Fortescue wrote *De Laudibus* while in exile at Berry, France, 1461-70.

<sup>5</sup>Whatever their backgrounds may have been, the members of an Inn consisted of Benchers, Barristers, and Students. The Benchers, comprising the governing bodies, were composed of the senior members, being designated more formally "Masters of the Bench." They were self-elected and unrestricted in number, ranging from approximately twenty in Gray's Inn to seventy or more in Lincoln's Inn and Inner Temple. Their powers though

not unlimited were extensive. In the nineteenth and twentieth centuries fundamental changes were instituted in each of the Inns and Legal Societies of the British Isles. Thus, the description here given would not represent them or their activities at the present time nor for many years past.

To each Inn is attached a Chapel. The Temple Church used jointly by Middle Temple and Inner Temple is a fabric of high antiquity and much dignity. For centuries, each Inn has also had a library with collections which today are priceless. Formerly orders were issued by both the Benchers and the Crown on the subjects of dress, manners, morals, and religious observances of students and members. For instance, "In 38 H. 8. (30 *Maii*) there was an Order made, that the Gentlemen of this Company [Inner Temple], should reform themselves in their cut or disguised Apparel, and not to have long Beards: And that the Treasurer of this Society should conferr with the other Treasurers of Court, for an uniform reformation, and to know the Justices opinion therein, and thereupon to perform the same: Whereupon in their Parliament held 5 *Maii* 1 & 2 *Ph. & M.* there was a decree made, that no Fellow of this House should wear his Beard above three weeks growth upon pain of XXs. forfeiture." (Dugdale, *op. cit.*, 148.) So also it was ordered that no member should "come into the Hall with any Weapons, except his Dagger, or his Knife, upon pain of forfeiting the summ of five pounds." (*Ibid.*) It has been stated on the authority of Fortescue, *op. cit.*, 187-92, that the students of the Inns of Court learned to dance, to sing, and to play instrumental music. These accomplishments found expression no doubt in the Masques and Revels for which the societies formerly distinguished themselves, especially Inner Temple and Gray's Inn. Such entertainments were of great antiquity and of much magnificence, involving very considerable expense. John Evelyn in his *Diary* speaks of the Revels at the Middle Temple (1667/8) as an "old riotous custom" having "relation neither to virtue nor policy." The last Revel appears to have been held at the Inner Temple in 1734 to mark the occasion of the elevation of Lord Chancellor Talbot to the "Woolsack." The Master of the Revels was the "Lord of Misrule." Tradition ascribes the first performance of Shakespeare's *Twelfth Night* to a Revel held in the Middle Temple in February, 1601. William Bray, *Diary and Correspondence of John Evelyn*, II, 35. For other references to Revels see *Ibid.*, I, 381 [1661/2]; II, 361 [1697]. Thus members of the Inns received educational training other than that which was strictly legal. For references to Masques performed in 1617 and 1634, and their costs to members, see Dugdale, *op. cit.*, 150. For a full account of the matter see A. Wigfall Green, *The Inns of Court and Early English Drama*, *passim*. In 1611 Lincoln's Inn ordered "that for the future prevention of disorder and scurrility, no more Plays should be in this House upon the Feast of *All Saints*, or *Candlemass-day*: but this Order was repealed the 4th of November following." (Dugdale, *op. cit.*, 149.)

\*Charles Warren, *History of the American Bar*, 30. This may have accounted in large measure for the poor showing made in their profession by those New York lawyers who returned to the province after having studied at one of the Inns.

\*Roger North, *Discourse on the Study of the Laws*, pp. 1-2. The law a student learned was largely acquired outside the Inns by attending court or by clerking in law offices. A young American who had passed almost five years in London wrote home: "If I had known how to procure a person to instruct me in the law, or where such a person was to be found, I should not have neglected doing it, but indeed such a one is not easily to be met with. The best way to become a good lawyer is to be under an attorney, not as his clerk, that would not be so proper for a gentleman, but to be in his office on the footing of a gentleman by allowing him a handsome gratification. I should then have known the practical part of the law, by which knowledge many difficulties would be removed which for want of it are now insurmountable. Most of our great lawyers have been brought up under attorneys. The great Lord Hardwicke is a recent instance of that method's being the best for forming a sound lawyer." (Letter from Charles Carroll to his father, January 7, 1763. K. M. Rowland, *op. cit.*, I, 53-4.)

<sup>10</sup>Quoted from an article by W. B. Odgers in *A Century of Law Reform*, I, 32-3.

<sup>11</sup>K. M. Rowland, *op. cit.*, 53-4.

<sup>12</sup>When Peter DeLancey departed in 1762 to study in London, his relative, John Watts, well-known New York City merchant, wrote to Sir William Baker:

"Sir, This will be deliver'd you [*sic*] by Mr: Peter DeLancey Jun: third Son and Namesake of the Eldest of Mr: DeLanceys Children at present living. His father designs him for the Study of the Law & recommends him to your kind advice to be fixt in the most beneficial Way for that End. We have a high Character of a Professor at Oxford, who they say has brought that Mysterious Business to some System, besides the System of Confounding other People & picking their Pockets, which most of the Profession understand pretty well, however this as well as every thing else is referr'd to your better Judgment. . . ." (*Letter Book of John Watts*, 12-13.) On January 9, 1759, Charles Carroll, Sr., wrote his son Charles: "Pray let me know in what Court of the Temple you are and how to direct you. I am glad to hear your Chambers are handsome, convenient, and that they please you. Mr. Perkins writes me that if you like them and will have them for three Years more, ye owner will paint them. I think you must stay at least four years in ye Temple, you cannot acquire a perfect knowledge of ye Law in less, if in so short a time." (T. M. Field, *Unpublished Letters of Charles Carroll of Carrollton*. . . 37.)

<sup>13</sup>In the early part of the century *The Spectator* (issue of March 24, 1710/11) mentions "Another numberless branch of peaceable lawyers, are those young men who being placed at the Inns of Court in order to study the laws of their country, frequent the play-house more than Westminster-Hall and are seen in all public assemblies except in a court of justice."

It must not be supposed that the only education to be secured by those studying in London was to be found in the Inns or in the courts. The varied life of the great metropolis itself offered many advantages, and a few years



spent in London was a liberal education. Nor must it be imagined that students in New York City were all industrious, or that the city was free from distractions and dissipation. In a letter to Moses Franks, well-known New York and Philadelphia merchant then living in London, dated November 24, 1763, John Watts wrote: "This will be deliver'd [to] you by your Nephew Jack, who I am glad is taking his leave of a place that beyond doubt is the worst School for Youth of any of his Majestys Dominions, Ignorance, Vanity, Dress & Dissipation, being the reigning Characteristicks of their insipid Lives. When you knew it, there was some Emulation, some thirst of knowledge, some pride of becoming *really Men*, but the Tast[e] now is to be anything else, that a total disregard of knowledge or a thought of being either of use or of Credit to their County, can make them." (*Letter Book of John Watts*, 200-201.)

<sup>14</sup>Aside from the acquisition of an education, one motive in going to London to study was the benefit to be derived from travel and friendships, for relationships valuable in the future were often established. Philip Livingston, Jr., of New York, in describing his life while attending Middle Temple in 1762, wrote: "I am well fixed in y<sup>e</sup> Temple according to my wishes, in a pleasant Sett of Chambers, in New Court Middle Temple, they are not Elegant, notwithstanding they are at a high rent, but still so decent, that I am not ashamed to have any Gentleman shewn in, that is so kind as to call on me. My Mornings are generally engaged in Study, which as they are very long I am told is sufficient time to be applied in Reading, for I seldom dine till four O'Clock and then with a Sett of Gentlemen, at the Turks Head Coffee House in the Strand in whose acquaintance I think myself very happy. The M.<sup>rs</sup> Allen's of Philadelphia were so kind as to introduce me to this Set on my first coming up to Town, most of whom are Gentlemen of considerable fortunes, two of your Friends, viz. Mess.<sup>rs</sup> John, & Dick Penn, when in Town, dine frequently with us." (*Letter of Philip Livingston, Jr. to "My Lord"* in the *William Alexander Papers*, Vol. 3, 1759-1773, p. 34.)

<sup>15</sup>The applicant need not necessarily have eaten so many meals at the table conducted by the Inn, but rather he must have paid for so many meals, whether eaten or not.

<sup>16</sup>See Petition of Joseph Reade, Jr. pp. 23-4, n. 1, herein.

<sup>17</sup>No degree at law can be obtained without being called to the bar. The being entered of the Temple is a necessary, previous and preparatory step to that ceremony, which, though a ceremony, is an opening to all preferments in the law; 't is attended with no other advantages, but many and great inconveniences; the chiefest is the frequenting loose and dissolute companions. For this reason I have resolved not to enter myself of the Temple —to what purpose?" (*Letter of Charles Carroll from London to his father in Maryland*, 1762, K. M. Rowland, *op. cit.*, 49.)

<sup>18</sup>The term "barrister" arose in the sixteenth century. The differentiation between "attorneys" and "barristers" probably dates from an order of Lincoln's Inn in 1556: "From henceforth no man shall be admitted into the fellowship of this House without consent of six of the Bench." In 1557 the

judges made an order that "attorneys" should be excluded from the Inns of Court. Attorneys (officers of the Common Law Courts) and solicitors (officers of the Courts of Chancery) could only draw writs and papers and instruct the barristers as to the matter in litigation. They were generally graduates of one of the Inns of Chancery. By statute in 1606 the distinctions between barristers, attorneys, and solicitors was fixed. (For regulations concerning these matters, see: Fortescue, *op. cit.*, *passim*; William Herbert, *Antiquities of the Inns of Court and Chancery*, *passim*; John F. Dillon, *Laws and Jurisprudence of England and America*, chs. II, III, IV, 34-142; Edward Wynne, *Eunomus: or, Dialogues . . .*, especially Dialogue II, 50-6, 150-67.)

There was also the practitioner "below the bar," the lowest in the ranks of the forensic hierarchy, whose practice was limited to pleading and conveyancing. He was precluded from appearing in court by the fact that he had not been "called" to the bar. It should be noted that during the late seventeenth century and practically the whole of the eighteenth, a barrister of one Inn was occasionally permitted to join another Inn. How extensive such a practice was, is unknown. Likewise, it is not clear whether all the Inns opened their doors in this way.

<sup>19</sup>See E. A. Jones, *op. cit.*, *passim*, but especially pp. XXVIII-XXIX for Americans "called" during the English period. See also Appendix II, pp. 146-9, herein for the names of New Yorkers who at one time or another studied at Inns. South Carolinians especially appear to have cherished the education to be secured in them. Before the year 1815 seventy-four young men from this state are said to have joined Inns of Court, while the next largest number was forty-nine, from Virginia. *Ibid.*, p. XXVIII. Before being "called," each applicant underwent an examination. "In 6 *Eliz.* (2 *Maii*) there was an Order made, that none should be called to the Barr, or received as an *Utter Barrister* in this Society [Inner Temple], before he had been first called and examined by the whole Bench, as by a former Order made 5 *Nov.* 3 & 4 *Ph. & M.* was provided. And "In 42 *Eliz.* it was also ordered that special regard should be taken of such as shall be called to the Barr and Bench, for their learning." (Dugdale, *op. cit.*, 148.)

<sup>20</sup>Prior to 1775 only 12 New Yorkers are known to have joined Inns of Court.

<sup>21</sup>E. A. Jones, *op. cit.*, pp. XXVIII-XXIX. Continuing, this same author writes:

"The schools, colleges, and universities of the American-born members are as follows: At least 27 went to the University of Cambridge, some of whom had previously been at such well-known English schools as Eton College, Westminster, and Wakefield, and others at academies for young gentlemen, which were numerous in England in the eighteenth century. Eleven went to Oxford University. The three Scottish Universities of Aberdeen, Edinburgh, and Glasgow claim one, two, and three students respectively. Two are recorded at Trinity College, Dublin.

"Nine came from Harvard. Two other members of Inns of Court were honorary graduates of Harvard and one, Sir Francis Bernard, was a benefactor

of the College. Three were educated at Yale. The oldest college in the Southern colonies, William and Mary College, Virginia, is represented by at least four members. King's College, New York (now Columbia University), was the *alma mater* of one member, and Princeton of two.

"The old College of Philadelphia (now the University of Pennsylvania) takes precedence in the number of its American-born alumni who were members of Inns of Court, namely, sixteen." (*Ibid.*)

<sup>21</sup>Upon presentation of such certificate the Governor of New York issued a license and the Supreme Court admitted the barrister to practice in all the courts of the colony. In fact, the courts seem to have allowed graduates of Inns to practice without the formality of being admitted. The admissions of only four lawyers positively known to have been "called" are recorded in the *Minutes of the Supreme Court of Judicature of the Province of New York*. They were: John Guest, April 6, 1700; Daniel Horsmanden, May 14, 1731; Joseph Reade, Jr., October 19, 1762, and Philip J. Livingston, October 26, 1765. A Robert Livingston was licensed November 8, 1710, and a Robert Livingston was admitted March 11, 1712/13. Which of these, if either, was the member of Middle Temple, 1706, is difficult to determine, although it was probably one of them. Josiah Martin, Jr., joined Inner Temple February 4, 1757, and was licensed and sworn in office 19 October, 1759. That he could have been "called" to the bar by Inner Temple after so brief a residence, if indeed he ever attended, seems doubtful, although the condition of the Inns of Court of that period would not necessarily have precluded such a situation. If he were "called," then his name should be added to the four above listed. Philip Livingston, Jr., joined Lincoln's Inn September 23, 1761, and in his letter to the home authorities, dated September 11, 1769, in which he asks to be continued in his offices of principal Surrogate and Register of the Prerogative Court of New York, he says he was regularly bred to the profession of the law at Lincoln's Inn. *Docs. Rel. Col. Hist. N. Y.*, VIII, 187. However, under date of September 18, 1764, the *Minutes of the Supreme Court of Judicature of New Jersey, 1760-64*, p. 197, read: "Philip Livingston Jun Gent. having produced a license from his Excellency Josiah Hardy Esq<sup>r</sup>. to practice as Attorney at law in this Province dated the thirteenth day of November 1761. And it appearing to the court by the Roll that he was qualified in open court in March Term 1762 and his Admission was then omitted to be Entered Ordered that his Admission be hereafter allowed as of that Term." On March 8, 1762, a license was issued to a Philip Livingston to practice in the several courts of the Province of New York. Philip John Livingston's license was issued October 14, 1765. It is almost impossible to untangle the story of the Robert Livingstons and the Philip Livingstons.

<sup>22</sup>For lists of these see Appendix II, pp. 146-9.

<sup>23</sup>These were: James Morris (1721), Thomas Elde (1733), Thomas Kennedy (1751), Robert Livingston (1761), Peter DeLancey (1762), and Christopher Robert (1771). Peter DeLancey (Lincoln's Inn, 1762) returned to New York as a stamp collector. He may have practiced now and again. He was killed in a duel in South Carolina in 1771. E. A. Jones, *op. cit.*, 60; *Docs. Rel. Col. Hist. N. Y.*, VI, 469.

<sup>24</sup>These were: Clement Cooke Clarke, King's College, 1771, who had been a clerk in the office of Samuel Jones from 1773 to 1776, and who joined Lincoln's Inn August 25, 1778; Neil Jamison, son of a New York City merchant, a graduate of the University of Glasgow, joined Lincoln's Inn September 21, 1782; James Robertson, probably the son of Governor James Robertson, joined Inner Temple December 18, 1783; Samuel Peach Cruger—son of Henry Cruger, well-known merchant of New York and Bristol, England, loyal to the American cause, twice a member of Parliament, and subsequently New York State Senator—joined Lincoln's Inn May 6, 1785; Henry J. Jessup, scion of a prominent New York City family, joined Inner Temple August 6, 1786; Henry Walton, member of one of New York's most highly respected families, joined Lincoln's Inn April 25, 1787. The following were connected with New York: (1) William Burnet, son of the former Governor, Harvard 1742, joined Middle Temple October 29, 1742. He owned much property in New York. (2) John Rayner, only son of John Rayner of Grays Inn, was admitted to Grays Inn December 20, 1703. In 1750 he was one of its "Masters of the Bench." His father was Attorney-General of New York, 1709-20. (3) Thomas Mompesson, son and heir of Roger Mompesson, Chief Justice of New York from 1704 to 1715, joined Middle Temple April 26, 1714. He was a Bencher in 1750, a Reader in 1760, and Treasurer of the Society in 1761.

<sup>25</sup>To those who are known to have received their educations in Inns of Court should be added the names of several score lawyers for whom substantial evidence exists that they had been trained in law before reaching New York. However, since the published records of the graduates of the different Inns—particularly the Inns of Chancery are incomplete, and since it is not known in what attorneys' offices they studied, these men cannot be checked with accuracy. It is believed that some were barristers; others probably were duly licensed attorneys and solicitors, and in a few instances it is known where they clerked or studied. Each practiced in New York—some for more than forty years—their names occurring on the records throughout the entire colonial period. For lists of these, see Appendix II, pp. 146-9.

<sup>26</sup>Although nothing definite is known of the exact arrangements made in such cases, probably each such absentee member satisfied all requirements as to fees, dues, etc., provided by the rules of the Inns. It is also probable that the degree of Barrister-at-Law was awarded without conditions.

<sup>27</sup>Alexander and Smith joined Gray's Inn on February 1, 1724/5, and March 10, 1726/7, respectively; Murray and Chambers joined Middle Temple May 12, 1725, and May 3, 1731, respectively. Several other cases offer difficulties. For example:

(1) William Livingston was graduated from Yale in 1741 and is recorded as having joined Middle Temple on October 29, 1742. In July, 1742, he entered into articles of apprenticeship to James Alexander for four years. He was in the latter's office in 1745, and at that date—from his own confession—he had been there long enough to become thoroughly disgusted with the methods employed by lawyers in instructing their clerks. See *New York*