

Book Reviews

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The Lion And The Throne. By Catherine Drinker Bowen. Boston. Little, Brown and Co. 1957. Pp. 652. \$6.00.

“And the twelve judges of the land may be compared to the twelve lions supporting Solomon’s throne.”

This book is a story of one of the twelve lions, Sir Edward Coke, a most determined and ferocious one, who cavorted about the throne of England from 1552 to 1634. During his early career he supported the throne, but in his later life he dedicated himself to removing those supports. How thoroughly he destroyed the supports of the English throne is attested by the fact that the English Queen is today subordinate to Parliament. Coke is responsible for the different status of the Elizabeth of the seventeenth century and today’s Elizabeth. His long career is traced against the turbulent background of English life during the reigns of Elizabeth and the obstinate Stuarts, James and Charles. The offices which he held are best enumerated by an inscription on his tombstone near Tittleshall Church located by the mournful flat marshes between Holkham and the sea:

“In his younger yeares Recorder of the Cities of Norwich & London, next Sollicitor Generall to Quene Eliza. and Speaker of the Parliament in ye XXXV years of her Raigne. Afterwards Attorney Generall to the same Queene, as also to her Successor Kinge James. To both a Faithful Servant, for their Majesties for their Safetyes. By King James constituted Chief Justice of both Benches successively. In both a just, in both an exemplay Judge. One of his Majesties most honorable Privie Counsell, as also of Counsell of all hir Forrests, Chases and Parkes. Recorder of ye Cittie of Coventrye and High Steward of the University of Cambridge, whereof he was some time a member in Trinitye Colledge. A chast husband, a provident father. He crowned his pious life with a pious and Christian departure at Stoke Poges in the county of Buckingham. His laste wordes, Thy kingdome come, thye will be done.

Learne, reader to live so That thou may’st so dye.”

Coke’s high offices are impressive. But other men have held similar offices and posterity is not their debtor. We

must look beyond the position of the man to determine his real worth. Were he not more than an office holder he would have been obscured by the giants of men who were his contemporaries and by momentous issues confronting England during the seventeenth century. The chief value of this book is its correlation of these two topics to a central theme — the common law of England, and to a central figure — Edward Coke.

Sir Walter Raleigh parades throughout the lives of Elizabeth and James, arrogant and magnificent in jewels and velvet. He is a hater of Catholic Spain and revels in the shedding of Spanish blood. For that, Elizabeth loved him and gave him honor and station. But he is no respecter of royalty or royal prohibitions, and for that James hated him. He was charged with treason before a Special Commission of Oyer and Terminer, of which Popham was a member and Coke (the Attorney General) the prosecutor. The charge was conspiracy to kill the King, raise rebellion and alter the religion of the realm. It was a dark kind of treason, and the veil is still upon it. Coke, ambitious to secure advancement from James, prosecuted the case with venom. He procured the confessions of alleged co-conspirators against Raleigh; questioned him for four months prior to trial and hurled his answers back at him; and he made outrageous verbal attacks upon him in open court. As a result of Coke's singleminded prosecution, Raleigh was convicted and Chief Justice Popham passed sentence upon him as follows: "Sir Walter Raleigh, since you have been found guilty of these horrible treasons, the judgment of the court is, That you shall be had from hence to the place whence you came, there to remain until the day of execution. And from thence you shall be drawn upon a hurdle through the open streets to the place of execution, there to be hanged and cut down alive, and your body shall be opened, your heart and bowels plucked out, and your privy members cut off and thrown into the fire before your eyes. Then your head to be stricken off from your body, and your body shall be divided into four quarters, to be disposed of at the King's pleasure."

But Raleigh was versatile. He managed to secure commutation of sentence and lived in the Tower (Coke would reside there later) where he walked its battlements and watched the ships sail eastward with the tide. Treason was the popular crime during that age. Coke probably prosecuted and judged more treason cases than any lawyer who ever practiced. By these prosecutions he well earned

the reputation of a hard and vindictive lawyer. In this fashion he was the "lion" who supported the "throne". Coke did not live in a gentle age, nor was he a gentle man. It is fortunate for us that the iron of his age entered into the man, for in his later life, the personal liberty of the English speaking people would need the strength of his iron.

Every great man must have his rival; Coke had his Bacon. Consider the situations of Lee and Grant or of Burr and Hamilton. Their differences were mere squabbles compared to the battle of Coke and Bacon. They were contemporary law students, lawyers and judges. They aspired for the same office and the same woman. Both were men of unsurpassed ability and unlimited ambition. It was inevitable that they love or hate one another. They chose to hate. Coke achieved the office of Attorney General and Bacon had him removed. Coke became Chief Justice of Common Pleas and Bacon kicked him upstairs to a less influential position, the Chief Justice of England. Coke then became a member of the Privy Council and Bacon had him removed from both the Council and the Bench. No matter how high Coke's star would rise, Bacon would make it descend. Bacon achieved wealth, reputation, and position. He became High Chancellor and the King's chief advisor. Bacon asserted the supremacy of equity and the King; Coke maintained the Common Law was the supreme law of the land to which the King was subordinate. Bacon wrote the *Novum Organum*, the *New Atlantis* and the *Advancement of Learning*, and Coke wrote his *Institutes and Reports*. Bacon wrote for money, Coke from love of the Common Law. Therein was the weakness of Bacon's armor. Coke banished him to the Tower for accepting bribes from suitors in Chancery. While Bacon sickened in the Tower, (the same one of Coke, Raleigh and Essex) Coke finished his *Institutes* in his eighty-fifth year. This task would not have been so difficult had not Coke been thrown from his galloping horse on his eighty-first birthday. There seems to be no question but that stamina was Coke's long suit.

Some authors become entranced with a character other than the main one. Satan was nearly made virtuous by Milton in *Paradise Lost*. In a like manner, Bacon nearly supplanted Coke in this book. But the defection is understandable. History has seldom presented a man as amply endowed with political skill, intellectual breadth, overriding ambition, consummate power of expression and such gross lack of integrity as Sir Francis Bacon. He is a com-

bination of the best of man with the worst of Richard or Iago.

There are here the imperious Queen converging upon an intimidated Parliament exacting a subsidy through her mouth-piece, Edward Coke; the un-English King James who, in the name of God and the King, caused a thief to be executed without trial; and the weak-legged King Charles who, to Coke's everlasting fame, was made to concede his subordination to the belligerent Parliament of 1628. Surrounding these royal personages are the wise Lord Burghley who was excused from kneeling to the Queen; his son, Robert Cecil to whom Coke aligned himself; the Earl of Essex, whom Coke successfully prosecuted, and George Villiers, the Duke of Buckingham, who was stabbed by an inflamed citizen. Mixed with these nobles were the lawyers; Thomas Egerton (the Baron Ellesmere), John Seldon, Sir Edward Littleton, Coke and Bacon. In the background of this assembly was Ben Johnson, Shakespeare and John Donne, and to give them all something to work on were the ever present Catholics, or young firebrands like Guy Fawkes who conspired to blow up King James with gunpowder, or Doctor Lopez who was accused of attempting to poison Elizabeth. And during all this time, Coke was holding forth in Parliament or the Privy Council, the Temple Bar or the Inns of Court, preaching his doctrine that the King was not divine and was beneath the law of England. To espouse such a cause when monarchies were in full strength on the Continent before the swashbuckling set of characters who bestrode England at that time, and while so doing to hold high public office or escape the hangman took courage and adroitness. But Coke accomplished it, even though agents of the Crown were in the room adjoining his death chamber hunting for statements in his Reports that might be considered treasonable.

On two points Coke was clear and decisive. He stated, "Acts of Parliament are to be interpreted by the judges of the laws of England and not by any canonist or ecclesiastical judge". Although Equity developed in spite of this statement, it nevertheless strengthened the common law when it was most in need of protection from royal encroachment. He stated again, "When the Act of Parliament is against common right and reason, the common law will control it and adjudge such Act to be void." Herein is one of the first authoritative expressions of judicial review as it is now used. But it was at his last Parliament that Coke wrenched from the unwilling King Charles the royal ap-

proval of the Petition of Right. This petition protested arbitrary imprisonment without cause, the billeting of soldiers upon the people, the exaction of taxes and the denial of bail. Upon its ratification Coke ceased his public life and retired to live with one of his thirteen children.

This book traces the full and productive life of Sir Edward Coke. It is a scholarly and serious effort to bring alive a part of the past history of the law. It is a successful endeavor, and lawyers and historians alike will derive special pleasure from reading it.

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