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THE LION AND THE THRONE; THE LIFE AND TIMES OF SIR EDWARD COKE (1552-1634) by CATHERINE DRINKER BOWEN. Little Brown and Co., 1957, 531 pages, \$3.00.

In her biography of Lord Coke (1552-1634) Catherine Drinker Bowen has rendered a singular service to the Bar and to the public. This book recreates some of the noblest episodes in the slow, tortuous assertion of political freedom. It highlights the enormous role in the creation of liberty played by the Bar and the great men who have served in its ranks. The book has additional contemporary interest in that it analyzes the actions of men and governments in the face of a "cold war."

Coke was Attorney General from 1594 to 1606. He served as Chief Justice of Common Pleas and then of Kings Bench from 1606 to 1616. In his later years, from 1617 to 1628, he served in the Parliaments of James I and Charles I. In these various capacities Coke played a leading part, first in England's conflict with Spain and the Papacy, and later in the assertion of the supremacy of the common law and the liberties of the subject against royal prerogative.

Coke was the principal architect of the Petition of Right of 1628 and was the author of the *Reports* and the *Institutes*. In the *Reports*, Coke recorded forty years of British litigation. These *Reports* were to be the authoritative guide to both Bench and Bar for 200 years after Coke's death. The *Institutes* were destined to mark the path of the law for the law student until the publication of Blackstone's *Commentaries* in 1769. The teachings of Coke in his *Second Institute* nourished the views of the liberty of the subject held by the patriots of the American Revolution.

Mrs. Bowen's *Preface* points out that while Coke's reputation has been principally that of an author, his life was as retiring "as a buccaneer's." With searching scholarship, the author recreates the color and high drama of the men and politics of Elizabethan England. Coke emerges as the embodiment in law of the burgeoning genius that characterized the period, a worthy contemporary of the illustrious company of those times.

Coke had made his reputation at the Bar and as a lecturer in the schools of law. After serving for six months as Solicitor General, he was appointed by the Queen to be Speaker of the House of Commons in 1593.

Mrs. Bowen summarizes the temper of debate within Parliament in 1593 as follows:

. . . Why, after all, was the Spaniard coming with his warships, if not to change England's religion and set a Catholic king on the throne? In Rome and Madrid . . . it had become a crusade "The Enterprise," good Catholics called it, and from Valladolid to Dublin the word passed, carrying overtones

of courage, loyalty to the "true faith," and, for those wholly dedicated, the promise of a martyr's crown. . . . Nobody knew how many 'massing priests' circulated in London and the shires. The problem was to catch them; a hundred hands reached out to save and hide. Previous to 1535, every Englishman, after all, had been Catholic born. . . . Since the Pope's Bull against Elizabeth (1570), a man could not be a true Roman Catholic without denying his Queen, his country and his country's laws. Those who could not in conscience take Elizabeth's Oath of Supremacy were known as *recusants*.

For 12 years after Coke was appointed Attorney General, his special charge was the tracking down of "papist traitors."

In Coke's hand was lodged the pitiless machinery of the State. As Mrs. Bowen observes, "the Queen's prosecutor had but one client, exigent, demanding, without mercy and without soul — that great expedient corporation, the State." Into the grinding machinery of the State went the lives, liberties and properties of Englishmen. Informers and private spies abounded. Neighbor spied on neighbor; men hunted recusants for prize money as they would have hunted owls or wolves. Dishonest officials flourished. Men went into papist catching as a business, counterfeiting warrants and blackmailing people to buy silence of alleged treacheries.

All of the traitors did not bear the papal stigma. Protestant Non-Conformists of all shades, indiscriminately labeled "Puritan," rebelled against the Established Church. Many of them, too, met their deaths. The cruelty of the age was visited in full measure upon the traitor. Crowds flocked to view the hideous death — the hanging, the cutting down while alive, the disembowelling and the quartering. The very hideousness of the penalty made more traitors.

Coke himself prosecuted the great state trials of the period — the trials of Essex, Raleigh and of Guy Fawkes and his henchmen. Catherine Drinker Bowen has set forth many of the details of these trials and the slashing attack of the Attorney General upon the defendants. The lawyer today rubs his eyes in amazement. Without counsel and without the right to summon witnesses, the defendant made his own defense before his peers in the face of bitter invective from the best legal mind in England.

In the trial and conviction of Raleigh for treason, political hysteria reached its height. The conviction surprised even the Attorney General who prosecuted him, for the result was obtained on little more than presumption and surmise. The trial and its result brought a reaction in England. The objective of the preservation of the realm, and its inherent justification for grinding up the lives and property of so many, gradually gave way to a realization that justice, too, must be served.

The Anglo-American courts have been zealous in the defense of the

basic liberties of the individual. Contrary to what would have been expected from Coke, the Attorney General, there have been few greater contributors to the Anglo-American judicial tradition than Coke, the Judge. In an age of enormous monarchical power and authority, buttressed by a religious faith in the divine inspiration of the monarchy, Coke had the courage to assert the supremacy of law over the King's prerogative. He is well named the "Lion" by the author.

Mrs. Bowen recounts the struggle for supremacy in England between the common law courts and the prerogative courts such as Chancery and the Court of High Commission. The Court of High Commission was the successor within the Established Church to the Ecclesiastical Courts. The scope and power of High Commission may be gauged by the fact that since time immemorial, the Church had regulated family affairs. Writs of prohibition under Coke's seal rolled out of Common Pleas to the Court of High Commission when "lay" rather than "ecclesiastical" issues were before the latter tribunal. In time the King entered the dispute over the jurisdiction of High Commission.

From the various contemporary accounts of the meeting of November 13, 1608, it appears that the King avowed his readiness, as supreme dispenser of justice, to defend to the death his prerogative to call judges before him to decide disputes of jurisdiction. Moreover he insisted that *he* would "ever protect the common law." Coke insisted that the common law protects the King. James characterized Coke's speech as traitorous, that the king protects the law and not the law the King: "The King maketh judges and bishops. If the judges interpret the law themselves and suffer none else to interpret, they may easily make of the laws, shipmen's hose." Coke's *Report* picks up the story in these words:

... "Then the King said that he thought the Law was founded upon Reason, and that he and others had Reason as well as the Judges. To which it was answered by me, that true it was that God had endowed his Majesty with excellent science and great endowments of Nature. But his Majesty was not learned in the Laws of his Realm of England; and Causes which concern the Life, or Inheritance, or Goods, or Fortunes of his Subjects are not to be decided by natural Reason but by the artificial Reason and Judgment of Law, which requires long Study and Experience before that a man can attain to the cognizance of it; and that the Law was the golden Metwand and Measure to try Causes of the Subjects, which protected his Majesty in safety and Peace: With which the King was greatly offended, and said that then he should be under the Law, which was treason to affirm (as he said). To which I said, that Bracton saith, *Quod Rex non debet esse sub homine, sed sub Deo et Lege* — that the King should not be under man, but under God and the Laws."

Apparently the King was moved to raise his fist. Coke fell upon his knees, and the Lord Treasurer, Robert Cecil, intervened on Coke's behalf with the King.

Mrs. Bowen surmises from the contemporary accounts of the incident that Coke *did* fall on his face. It was that or a cell in the Tower.

The following morning a new prohibition under Coke's seal went out to High Commission from Common Pleas.

Coke was "kicked upstairs" to become Chief Justice of Kings Bench in 1613. Once again he challenged James over the jurisdiction of another one of the prerogative courts — this time the Court of Chancery. Coke, alone among the judges, refused to acknowledge his acceptance of the principle of the supremacy of the royal prerogative.

James had propounded to the Judges the following question:

. . . Whether, if at any time, in a case depending before the Judges, which his Majesty conceived to concern him either in power or profit, and thereupon required to consult with them, and that they should stay proceedings in the meantime, they ought not to stay accordingly? . . .

Coke's reply was "that when the case should be, he would do that should be fit for a Judge to do." Dismissal from the Chief Justiceship followed shortly.

The last and perhaps the greatest of Coke's years were before him. The third part of Mrs. Bowen's book is devoted to Coke as a member of Parliament. Once again Coke rose as the popular champion of the law and liberty against Royal prerogative, even though a member of the King's Privy Council. In the Parliament of 1621, after subsidies had been voted, Coke persuaded Parliament to resolve itself into the High Court of Parliament with the House of Commons acting as finders of fact and the Lords as Judges. The scandals and corruption of the reign of James I were ruthlessly exposed.

Vehement speeches were made in Commons against James I's rapprochement with Spain and the intended marriage of Prince Charles with the Infanta. Coke, the former Attorney General of the "Cold War" period, led the attack. A petition of grievances was formulated in which the conduct of the affairs of the nation was criticized. James struck back by denying the right of free debate within Commons and adjourning the session.

At Coke's instance a *Protestation* was entered on the journal of Commons for presentation to the King. The *Protestation* recited the ancient freedoms of Parliament — among them the freedom to debate, freedom to consider any subject, freedom to keep debate secret from the King and freedom from molestation on account of the transaction of Parliamentary business.

For his latest effrontery to the Crown, Coke landed in the Tower. Crown agents ransacked his papers with a view to charging Coke with treason. While still in prison he was sued by the Crown for 50,000 pounds. Both the treason charges and the civil litigation collapsed. Seven

months were to elapse, however, between his imprisonment and release. "Throw this man where you will," said James, "and he falls upon his legs."

Coke remained unchastened. In the first Parliament of Charles I, in 1624, he again led the critics of the conduct of foreign affairs. Another remonstrance was in preparation when Charles dissolved Parliament. In the session of 1626, Charles antagonized both the Commons and the Lords by dissolving the session when his favorite, the Duke of Buckingham, was under impeachment by Commons and the Duke's trial before the Lords was in progress. Dissolution had occurred, moreover, before any funds had been voted for the Crown. Moneys were indispensable to the involved foreign policy and alliances which Charles had made and for the conduct of the wars into which he blundered.

The Crown attempted to commandeer money by seizure or forced loan, although no appropriation had been made by Parliament. Out of the attempts to enforce the "loans" came the Petition of Right of 1628. Between the time of the dissolution of Parliament in 1626 and the convening of Parliament in March, 1628, hundreds of Englishmen who refused forced levies were imprisoned and held in jail without trial, or impressed into military or naval service overseas. Moreover, King's Bench had ruled that "refusers of the loan who had been imprisoned," were not bailable. As a further means of helping the Treasury, the Crown quartered soldiers among the population at large.

So great was the opposition to the policy of the Crown that by the Spring of 1628, Charles had no alternative except to convene Parliament. Four days before the session opened, the leaders of the Parliament decided that the theme of the session must be the right of the subject to be free from imprisonment without the expression of just cause, the right to be free from taxation except by act of Parliament, the right to be free from banishment and foreign service without the consent of the subject, and the right to be free from the arbitrary quartering of soldiers.

Coke at 76 was the outstanding and outspoken leader of the Parliament. His was the learning and the leadership that inspired the instrument whose principles were to reappear in the American Declaration of Independence. Coke stalwartly refused to capitulate or to compromise with the Crown through the three months of the "war of nerves" between King and Parliament before the Petition was approved by Charles I with the ancient words "*Soit droit fait, comme il est désiré.*"

Mrs. Bowen has indeed performed an excellent service. She has made alive a vibrant figure of the Bar and of history who in our day has been largely thought of as a scholar, removed from the arena of court room and Parliament.

MYRON N. KROTINGER