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Harlan Fiske Stone: Pillar of the Law. By Alpheus Thomas Mason. *The Lion and the Throne: The Life and Times of Sir Edward Coke*. By Catherine Drinker Bowen. *By Love Possessed*. By James Gould Cozzens.

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BOOK REVIEWS

HARLAN FISKE STONE: PILLAR OF THE LAW. By Alpheus Thomas Mason. New York: Viking Press, 1956. Pp. 914.

THE LION AND THE THRONE: THE LIFE AND TIMES OF SIR EDWARD COKE. By Catherine Drinker Bowen. Boston, Toronto: Atlantic Monthly Press Book, Little, Brown & Co., 1956, 1957. 652, XIII.

BY LOVE POSSESSED. By James Gould Cozzens. New York: Harcourt, Brace and Company, 1957. Pp. 570.

For those attorneys who like to read legalistic matters in their leisure time, three books have appeared in the relatively recent past which merit some attention. Two are comprehensive biographies of historically eminent judges, Chief Justice Stone and Lord Chief Justice Coke; the third is an intensive examination of two days in the life of a fictional attorney, Arthur Winner, Jr. Miss Bowen, whose previous works in this field have been widely popular, adopts the sensible approach of ignoring Coke's forbears, most of his first wife's family, and almost all of the first four decades of his life, plunging into the middle of things with his election to the position of Speaker of the Commons in his 41st year, 1593. Election to the House itself was not an unalloyed blessing in these times. "Two knights from Oxfordshire fled the country on hearing of their election." During the first day of the session, four members were carried off to the tower and the fleet because of their preliminary speeches. When a trade of money for prisoners was about to be proposed to Queen Elizabeth, Coke managed to push through the subsidy by means of an ingenious putting of the question. This is Coke's first chance to take a firm stand for freedom of speech. As the book progresses, we find him giving most of the other freedoms an equally swift dismissal. His ideas on freedom of religion are demonstrated by his sponsorship of bills restraining Catholics and certain Puritans to within five miles of their homes, or exiling them. It is one of the great apparent paradoxes of the history of the law that this man, who stood fair to be remembered as the most offensive Attorney General in England's history should have done a complete about-face on the bench, and by fighting and often losing ferocious battles on behalf of the various freedoms is known to us as one of the Great Judges in the history of the world.

After a brief flashback to cover the educational requirements of a young attorney (minimum: seven years of law school, usually more) and a brief lesson in the pronunciation of Coke's name, for the benefit of the layman and the occasional subnormal law school-freshman, we come upon Coke serving as counsel for Mr. Shelley, of the-rule-in-Shelley's-case fame. It is only momentarily disconcerting to find that Miss Bowen's legal advisers, of whom there appear to be several, have either forgotten the rule, or have mis-read the case. Her statement of the rule

creates a strong presumption that none of them relied upon their knowledge of the law of future interests in passing their bar exams.

This raises an interesting point as regards legal biographies in general, and this trio in particular. Miss Bowen's entire book presents an admirable picture of a vast area of Elizabethan life which is largely terra incognita even to most of those who profess to be familiar with the period. Her actual contact with the why and how of the legal decisions of the time, however, is somewhat perfunctory. What those decisions actually were is, except for the sad lapse with Mr. Shelley, set forth in fine black-letter statement, but the reasoning which supports the rules, and the effect of the decisions which Coke made or fought for, are almost never even suggested. It is probably true that a biographer can hardly be expected to string together a series of briefs of cases, and that a reader would never read such a collection. Nevertheless, it seems to be the epitome of lost opportunity to write about one of the finest legal minds of all time while carefully avoiding the central question upon which all the rest depends: how did this genius function? What Coke did makes a good book; how and why he did it would make a great one.

There is, however much that is fascinating in this account. The long and frighteningly complex battle with Francis Bacon, which would astonish a Machiavelli; the cold blooded series of betrayals and frame-ups which resulted in the deaths of Lopez, Raleigh, and countless others; the curious incidents of Coke's second marriage, illegal on a number of grounds; and the fantastic perversion of the rules of evidence and the canons of basic fairness, all are reborn and made uniquely ridiculous or surpassingly chilling in the section on Coke as an attorney.

As a judge, Coke seems to have brought a few practices with him which would seem worthy of censure, though it seems unlikely that he would go as far as Miss Bowen implies, and support his decisions by citing imaginary cases. We soon, however, run headlong into the Coke-Ellermere disputes, and a dizzy succession of alternate triumphs and ruins, in which Coke is either fired from his job and in jail or else holding down the highest judicial post in the realm, depending largely upon how James I, who has by now succeeded Elizabeth, reacts to his latest decisions. After an incredible family mess in which Coke and his wife both act like children, Raleigh is killed, then Bacon is exposed, then Coke is hired and fired a few times, and finally we get a golden flood of monumental law; Coke on Taxation, Coke on Bail, Coke on Habeas Corpus, setting the standards for a millenium of lawyers in two empires to follow. Risking his position with every decision, and his life with more than one, he strides from landmark to landmark like a latter day Colossus, consolidating his unbelievable progress in his monumental Reports and Institutes. As the candle burns brightest just before it dies, it is in these pages that Coke justifies his talents and earns the double reward of sufficient time to finish what he began and to die in peace.

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Had Coke lived in our days, he would probably not have had time to both write his reports and read Mr. Mason's exhaustive biography of Mr. Justice Stone, which contrasts with Miss Bowen's book in every important particular. To begin with the bitter, most lawyers will do well to skip the first hundred pages, unless the reader is interested in the hardness of a putative relative in about the ninth degree, who survived a scalping and several similar indignities at the hands of a bungling Indian. In this section is packed the most complete collection of irrelevant minutiae ever to escape the editor's blue pencil. The theory of the biographer seems to have been to collect every known or surmised fact about Justice Stone or any of his relatives, classmates or neighbors, arrange them in chronological order, and cement them loosely together by means of conjunctions for about fifteen per cent of the book. In fact, this method seems to have been applied to some extent to all of the book, but the first part is the most powerful anesthetic outside the pages of the Pharmacopoeia. After that the narcotic effect begins to lighten sporadically but not until page 262 (large pages, it should be noted, of small print) does one begin to get a return commensurate with one's investment. In defense of this method it can only be said that, when the day finally breaks, it does so with resounding success. This is a time of real interest; the dramatis personae include Holmes, Brandeis and Cardozo, more or less loosely pitted against such demons as Franklin Roosevelt and Hugo Black, against a backdrop of hugely important cases. The *Fansteel* and *Flag Salute* cases serve to introduce *Erie v. Tompkins*, and from here on Mr. Mason seems to have solved the problems of omnipresence. In any event, he is able to reconstruct and reconcile the various views of the individual justices, until out of a welter of memoranda among themselves, which range in tone from questions to suggestions to thinly veiled threats, the nine old men are ultimately able to produce an appearance of unanimity, or at least to more or less bipolarize their thoughts. There are times where the arguments seem about to shake the Court apart, when every judge is doing his best to assassinate all his brethren; half of these really violent arguments turn out to be based upon a single phrase, a few words in a footnote. This is not to say that such things may not be important, as Stone himself proves with his footnote in *Carolene Products*, but it sometimes seems curious that so many very intelligent people should get so bitterly involved over a bit of dictum which often seems to envision a state of affairs which could never occur. That they can get so involved, is, however, our salvation, and the measure of the intensity of their intermural battles-royal is the measure of our indebtedness to these giants, who fight daily with weapons most of the rest of us can hardly lift, much less use. It is here that Mr. Mason's ability to understand a legal argument becomes most important. Opinions, draft opinions, memoranda, letters and notes of all sorts are collated into a sensible pattern, the more intelligible to us because we know where they are going, while they are blazing the trails. This is hard writing, and easy to carp at if necessary, but the overall performance turned out by Mr. Mason is very competent, and parts of it are wonderful.

The third book is pure fiction, which would normally be enough to disqualify it for more than a brief mention in these pages. The editors have been kind enough to make a slight exception in this case, perhaps more out of weariness than conviction. Since this has been one of the most often reviewed books of the last two years, perhaps it would be fair to compare it with the other two works we have just considered. Mr. Cozzens in some ways combines the ability of the other two; his characters seem to be largely drawn from the same strata, and it is, like the other two, a book with a lawyer for a central character and a great number of other lawyers to support him. The difference is that Mr. Cozzens, unlike the other two, knows how to write. Instead of a picture of a bygone age, largely devoid of law, or a series of legal decisions often devoid of drama, Arthur Winner, Jr., exhibits the legal acumen of a Supreme Court Justice and utilizes it to the fullest in a series of situations which rival any mystery story for pure excitement. The climax presents an ethical problem so complicated that even a decision in accordance with the Code of Legal Ethics would seem to be entirely inadequate. Perhaps the most rewarding aspect of the novel is that it integrates profound questions of law, ethics and morals into a background which is not on the one hand Elizabethan and therefore archaic, or on the other hand that of unique tribe of judicial specialists, but rather the not extraordinary life of a believable modern attorney. The only adverse criticism which it seems possible to make is that, like all of Cozzens' previous works, this one requires a certain amount of concentration. For those who have read and disliked such previous publications as "Guard of Honor" and "The Just and The Unjust," this book is bad medicine; for those who enjoyed such works and thought that the same sort of thing might be done even better, this is a superlative answer to their expectations. One thing, at least, it certainly is: the finest and most sympathetic characterization of the members of the profession which has ever been written, and one of the most notable literary achievements of the past half-century in any language.

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