

JUDGE AND JURIST IN THE REIGN OF QUEEN VICTORIA. By C. H. S. Fifoot, M.A., F.B.A. [1959, London. Stevens & Sons Ltd., 15sh. pp. 140.]

For the eleventh in the series of the Hamlyn lectures the Hamlyn trustees invited Mr. C. H. S. Fifoot whose contribution consists of five lectures on the respective contributions of judge and jurist in the reign of Queen Victoria to the development of English law. The selection of the reign of Queen Victoria as the period for investigation places the book among the growing list of contemporary re-interpretations of the so-called Victorian Age and this invites enquiry as to the justification for regarding the sixty-four years of Victoria's reign as constituting a distinct historical period which may be intelligibly investigated as such. Mr. Fifoot apparently has his doubts on the point:

upon the crowded years of her reign no single pattern may be imposed.

The book therefore lends further weight to the view that to regard the years 1837-1901 as a distinct and significant historical period is merely to erect an artifact which takes no account of the heterogeneous nature of those years whose only cohesion is provided by the mere fact that Queen Victoria happened to be on the throne.

They were crowded years those sixty-four glorious years as any comparison between 1837 and 1901 will reveal, but they were not all equally crowded. The great years of legal change were those of the second half of the century: the thirties and the forties belong not so much to the period of transition as to the tail end of the previous century. It was in the second half of the nineteenth century that the twentieth century was being born; it was then, and more especially in the sixties and the seventies that the shape of the legal world as we know it today was being hammered out. The great period of legal activity associated with the sixties and the seventies gradually burned itself out towards the end of the century to be followed by a relatively inactive period which lasted until the second world war, the years following which have witnessed another burst of activity.

This aspect of the reign of Queen Victoria emerges only incidentally from Mr. Fifoot's account. He does admittedly divide the history of the reign into three periods; 1837-1852 (the year of the Common Law Procedure Act); 1852-1875 (the year of the Supreme Court of Judicature Act) and 1875-1901 but this hardly stresses sufficiently the significance of the point, for it is mentioned only in the first lecture and is not pursued in those that follow. In fact Mr. Fifoot devotes almost his whole attention to the middle period, for over two thirds of the cases that he discusses are taken from these years, and the greater number of those taken from the other two periods are mentioned only incidentally.

Despite his title, therefore, Mr. Fifoot is basically concerned not with the sixty glorious years but with the years 1852 to 1875. His title is slightly misleading in yet another particular, for in selecting the antithesis of Judge and Jurist Mr. Fifoot seems to have sacrificed accuracy for alliteration. In fact by "jurist" he appears to mean what most people would regard as textbook writers. The conferment of the title jurist is admittedly a matter of delicacy, but its conferment on such names as Anson, Kenny and Stephen is surely, without in any way detracting from their considerable reputations, stretching the title rather more than is usual.

Those writers that Mr. Fifoot selects yet further underline the fact that he is only really concerned with the latter part of the reign of Queen Victoria. Sir

Frederick Pollock published his book on contract in 1876 and his book on tort in 1887; Sir James FitzJames Stephen published his *General View of the Criminal Law* in 1863 and his *History of the Criminal Law in England* in 1883; Pollock and Wright published their *Essay on Possession* in 1888. All these works fall well into the third period into which the legal history of the reign may be divided and what is even more significant is that they all appeared towards the end of, if not after the great period of judicial creativity. As Mr. Fifoot himself notes

save for Austin English jurisprudence flowered too late to be a formative influence of major importance in the lives of Victoria's judges.

This is a disappointingly negative conclusion. Mr. Fifoot has set out to examine the relative influence of judge and jurist in the reign of Queen Victoria and he comes to the conclusion, which must have been apparent after a very cursory examination of the material, that no comparison can really be made. Negative conclusions are not without their significance but surely this one could have been established far more easily.

One further point which rather limits the significance of these lectures is that Mr. Fifoot has, after the general examination of the intellectual climate which he undertakes in his first lecture, limited himself to four specific topics; civil liability, corporate personality, possession and criminal liability. These are significant topics from which Mr. Fifoot's theme may be illustrated but it is a rather limited basis for the enquiry. The most surprising omission is surely that of contract but other areas of the law would surely have contributed equally relevant material for the thesis. This limitation of material must surely limit the significance of the conclusion that he has drawn. We are left to assume that the material drawn from other areas of the law would not affect his conclusions, but this he does not establish, nor does he attempt any particular justification for thus limiting his material.

Despite these limitations upon the significance of Mr. Fifoot's lectures there remains a good deal to be said on the credit side of the balance. The outstanding feature of the lectures, as they appear in the printed form, is their readability. They can be read with an enjoyment which is far too commonly absent from most legal works. The second feature of the work which calls for comment is that it constitutes one of the very few contributions to legal history which endeavours to deal with other than mediaeval materials. Legal history has far too often tended to stop, at the latest, somewhere round the beginning of the seventeenth century and with primary emphasis on the purely mediaeval period. Very little work has been done in tracing the development of English law over the last three centuries, and in view of the tremendous importance for the modern law of the period towards the middle of the nineteenth century this omission is most regrettable. If Mr. Fifoot's lectures do anything to encourage the development of modern legal history they will have achieved a most desirable result.

In conclusion therefore it may be said although the material utilised in these lectures is a good deal more limited than suggested by the title and although the period selected does not enable Mr. Fifoot to reach other than a rather negative conclusion the lectures are an interesting and readable if rather slight contribution to our knowledge of nineteenth century legal history.