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Book Reviews

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FRAUDULENT CONVEYANCES AND PREFERENCES. Revised Edition. By Garrard Glenn. New York. Baker, Voorhis & Co., 1940. 2 Volumes. Pp. xxxi, 1284. $17.50.

Nearly three and one half centuries ago the great Lord Coke was deploring the fact that "fraud and deceit abound in these days more than in former times"—*crescit in orbe dolus*.[1] The subject-matter of this modern treatise is therefore anything but novel. And that the author would be the last to deny, for his very thesis holds that the fraudulent conveyance has remained fundamentally unchanged since the time of Coke and the preference since Lord Mansfield. Indeed it is this continuity of principle with which he so skillfully binds together several centuries of cases into a pattern otherwise meaningless. From *Twyne's Case* of 1601 to the *Los Angeles Lumber Products Co.* decision[2] of 1939 is a far cry. Yet the reader reaches the epilogue reserved for the latter without having experienced the slightest logical discomfort.

This, of course, is a tribute to Mr. Glenn's genius for synthesis; and therein lies his real contribution to legal literature. Using as framework a handful of fundamental principles tempered with history and seasoned by experience, he integrates the superficially divergent subjects of fraudulent conveyance, reputed ownership, and preference into a symmetrical structure. For example, such a twentieth-century institution as promoters' secret profits is revealed as merely a fraudulent conveyance in disguise, while liability on watered stock is shown to be based upon reputed ownership. The only apparent difference between ancient and modern is, then, the streamlined, chromium-plated terminology of corporate law and the size of counsel fees. Consequently it is rather surprising to find the author refusing to hang the apparently kindred device of unlawful dividends on the Statute of 13 Elizabeth.[3]

As is to be expected, his "common denominator" system has its limitations. It is his own statement that "this law book is largely a drag hunt"; and the reader sometimes wishes that he would not be led so far afield, only to find that the scent has been lost. For instance, a single short

[1] Twyne's Case, 3 Co. Rep. 80b (1601).
[2] Case v. Los Angeles Lumber Products Co., 308 U. S. 106 (1939).
[3] The position of Parke, J., dissenting in Bartlett v. Smith, 162 Md. 478, 487, 161 A. 509 (1932).

chapter shelters the bankrupt stockbroker, the mortgage trustee, and the bank unlawfully pledging its assets to secure deposits! If these beasts cannot be adequately fed, they should be turned out to forage for themselves.

That, however, is merely a defect in construction. The really inherent limitation of the Glenn approach is that, in constantly generalizing, it leads to over-simplification. The law appears unbelievably—perhaps impossibly—symmetrical. Bothersome details have been sloughed off in the process of integration. The forest tends to obscure the trees. This fault, however, is not nearly so apparent here as in the companion book on *Liquidation*, the reason being, no doubt, that the materials dealt with are considerably more homogeneous. Nevertheless, both may well be used together, since certain fraudulent conveyance topics—the validity of assignments for creditors is an example—are developed only in the older work, with cross-references in the newer.

Although the latter appears to have much more practical utility, the practitioner should not, therefore, expect to find within its covers either encyclopedia or hornbook. Employing neither the aridly monotonous repetition of cases characteristic of the one, nor the canned principles usually offered by the other, the author has steered a middle course. The result is comparable in kind only to that achieved by Scott's recent treatise on *Trusts*, being, however, less detailed though more readable. In fact, breadth of treatment and lucidity of style make this perhaps the easiest reading of any American law text. Frank discussion of conflicting decisions and of unsettled points is invaluable because of the author's statement of his own reasoned opinion based upon broad experience and sound scholarship. This is generally accompanied by a criticism—always courteoeus, usually restrained—of the opposing view, from which is exempted not even "the aleatory delights of Supreme Court jurisprudence as it has been of late".

Except as to law review references, which are voluminous, footnotes are selective rather than exhaustive. And that is to be expected of the product of a truly independent mind. Moreover, eschewing the customary procedure of spreading a thin veneer of recent cases over those cited in a first edition, he has combed the advance sheets to provide an unusually large proportion of new decisions. Several of these, in fact, authoritatively es-

tablish rules which were in dispute at the time of the first edition. And in at least one important instance the Supreme Court has recently taken a position which had been stoutly defended by Mr. Glenn in the face of contrary lower court authority.[4]

Indeed it would be quite unfair to stigmatize as just another edition such a completely new work as this. First and most noticeable is the addition of preferences to the subject-matter of the older volume. This he justifies to the reader's complete satisfaction by showing, not their fundamental similarity to fraudulent conveyances (for the preference is only a "sporting proposition"), but rather the large number of liquidation situations in which creditors' rights are affected by both devices.

Equally important is the enlargement, both intensive and extensive, of the old material on fraudulent conveyances and reputed ownership. An expanded historical treatment of the former adds twenty pages of valuable original research. Recent cases have suggested the addition of matters ranging from the fraudulent conveyance as a contempt to collusive foreclosure as a fraudulent conveyance. Indeed the impact of the depression upon morality has produced significant developments in the whole subject during the nine years since the first edition appeared. No less than fifteen pages are now devoted to the fraudulent uses of life insurance. The after-acquired property clause, previously excluded entirely, is now shown to offer broad possibilities of fraud and preference. And such commercial devices as the pledge, chattel mortgage, conditional sale, consignment and trust receipt,[5] briefly included in the first edition as something of an innovation, have come to merit individual chapters.

Lastly, the year 1938 alone produced three important developments which would render any older text obsolete. The decision in *Erie R. Co. v. Tompkins*,[6] of course, has its application in this as in other fields. Of the greatest significance is Rule 18b of the Federal Rules of Civil Procedure, which dispenses with the necessity of judgment as a prerequisite to avoiding a fraudulent conveyance in the Federal courts. Abolishing a requirement which they have always imposed regardless of state law, the new rule

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[4] Moore v. Bay, 284 U. S. 4 (1931).

[5] Interestingly enough, the first reported use of this expression was by the Maryland Court of Appeals. Barry v. Boninger, 46 Md. 59 (1877).

[6] 304 U. S. 64 (1938).

aligns the Federal practice with that under the Uniform Act and other state statutes reaching the same result.[7]

Undoubtedly this second edition has its chief *raison d'etre*, however, in the many far-reaching changes in the law of fraudulent conveyances and preferences affected by the Bankruptcy Act of 1938. For instance, the trustee's suit to set aside a conveyance now requires a full chapter because of such innovations as the incorporation into the new statute of many features of the Uniform Act, and the extension of his power of avoidance for the first time to corporate reorganization. Other changes could be detailed without number. Suffice it to say that the discussion appears generally complete. Of course there are gaps, as already pointed out; but only encyclopedic treatment is proof against that. Thus the chapter on Preference by Legal Lien slurs over the great conflict as to whether an adjudication under the old Act automatically discharged a lien against the whole world, irrespective of any action by the trustee. This has been settled in the negative by the Supreme Court[8] since the book's appearance.

On the other hand, the Maryland lawyer should be pleased to find an outline of the debate currently raging over the effect of the new Section 60a upon the assignment of accounts receivable. Local interest arises from the author's conclusion that, in a state such as this, where the first of several assignees to notify the obligor prevails,[9] the assignment may become voidable as a preference.[10] If approved by the courts, this result will cripple account financing by banks and credit companies, since they cannot afford to give notice.

Such a random example serves to underline the significance of recent developments in the field of creditors' rights. True, they will be brought up to date by pocket supplements to the encyclopedias and bankruptcy manuals. And that may satisfy some. But to the lawyer who practices on the basis of reason and principle the present work will remain a classic long after its citations are outmoded.

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[7] Although Maryland adopted the Uniform Act in 1920, Md. Code (1924) Art. 39B, Secs. 1-14, a predecessor statute was the first in the country to abolish the need for judgment. Md. Laws 1835, Ch. 380.

[8] Fischer v. Pauline Oil & Gas Co., 60 Sup. Ct. 535 (U. S. 1940).

[9] Lambert v. Morgan, 110 Md. 1, 72 A. 407 (1909).

[10] *Contra:* Articles in (1940) 34 Ill. L. Rev. 538; and (1939) 26 Va. L. Rev. 168.

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A COMPILATION OF WORKMEN'S COMPENSATION CASES. By Robert E. Coughlan, Jr. Baltimore. A. W. Zimmer, 1939. Pp. xvii, 243. $3.50.

There has been an amazingly small number of Workmen's Compensation cases decided by the Maryland Court of Appeals (171) when it is considered that the Act was passed originally over 25 years ago. And yet the busy practitioner, particularly if he does not handle many Workmen's Compensation cases, has been until now hard put to locate a point of Maryland law under the Compensation Act. (Geppert's Index, which is useful in its field, was compiled in 1936, and has never been revised). More importantly, even when so located it is difficult for him to carry, either mentally or physically, a complete picture of the case law of Maryland. Mr. Coughlan has provided a very useful remedy for this two fold problem of lack of an adequate digest and understandable general unfamiliarity with the cases in this specialized branch of the law. His digest of Workmen's Compensation cases is well done, carefully and faithfully handled, and complete through Volume 175 Maryland. It can be heartily recommended: to the specialist as a convenient handbook to assist the memory; to the barrister who appears infrequently, as an invaluable primary source of our compensation law; and to the student as a substitute for an otherwise extremely meagre idea of the *raison d'etre* of the Compensation Act, since he has in all probability not been offered more than the briefest of sketches of this subject at law school.

A merited criticism is that the index is prepared more on the lines of indices to other Maryland law books, rather than on a "common sense" basis. Although it may well be said that such "common sense" indices are not always either sensible or common, yet on the whole they tend to greater speed and accuracy than a general index following only very broad titles. But the index is complete, and is more thoroughly understood with recurring use.

The cases are numbered, digested chronologically, and both the Maryland and Atlantic citations are given. It is to be hoped that Mr. Coughlan will keep his book down to date, and that while so doing he will broaden the index base as far as consonant with his obvious plan to provide a conveniently small handbook of compensation cases.

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LOOK AT THE LAW. By Percival E. Jackson. New York. E. P. Dutton and Co., 1940. Pp. 377. $2.75.

On first glancing at this book, its title, and its table of contents, one easily gets the impression that it is but another journalistic exposé of the law and the lawyers, and the many foibles thereof. Reading of it, however, leads to the refreshing discovery that it is an intelligent and well-balanced appraisal of the short-comings of our calling. While all the stock examples of the law's defects are paraded in proper place, yet this is done dignifiedly, not so as to vilify, but rather to inquire why they are and what can be done about it.

The author's essential thesis is that the defects in the law are primarily to be blamed on the layman—that lay citizens are responsible, either for perpetrating many of the oddities of the law, or for tolerating the continuance of the others. This is a point desirable to be made—particularly in the face of the frequent reprinting in the daily press of tables of eccentric laws in force in different parts of the country. It would be a safe guess that nine-tenths of them can be traced to laymen or to lay pressure groups which engineered them and/or opposed their elimination.

After an introductory chapter, there come ten, each devoted to a typical layman's complaint about the law. These are that there is too much law, that it is uncertain, too rigid, too technical, hypocritical, too slow, too expensive, that lawyers are dishonest, judges corrupt, and witnesses liars. The final three chapters are devoted to the remedy for it all. The author qualifies himself as competent to write as he does by the wealth of detail he has marshalled. Accurate references to many of the phenomena—old and new—of the legal scene show the breadth of his reading. Many of the obscure technicalities of our criminal, divorce, and other branches of law are drawn on; at the same time up-to-the-minute references are made to the workings of the American Law Institute, the bar associations, and other organizations active in making over the legal scene.

Many legal anecdotes are included. The venerable one[1] about the crossing watchman and the unlighted lantern is streamlined by having the watchman-witness volunteer, at the end of his cross-examination, that the lantern was not lighted. Another one[2]—not so familiar, perhaps, but

[1] P. 314.
[2] P. 217.

amusing—could have been used in this issue of the REVIEW, in the leading article on Court of Appeals statistics, with particular reference to the reversal percentages of the trial judges,[3] had not the authors thereof tactfully refrained from disclosing the individual judges' figures by name.

This anecdote—obviously one not emanating from Maryland—concerns the trial judge with the notoriously poor "batting average" in his appellate courts. Once, on appeal from him, appellant's counsel opened his argument thus: "This is an appeal from a decision of Mr. Justice X." An appellate judge interrupted him: "Yes, counsellor, and what is your second ground for appeal."

It should be emphasized, however, that the book is no mere collection of anecdotes and examples. These are present, but not merely for the purpose of being told. They are used well to make their points. The author not only collected much relevant material, but showed real insight in making use of it.

This is a valuable and useful book, and one which reads easily. It should be read both by lawyers and civic-minded laymen. For the former it will be a good antidote for any feeling of complacency about the perfection of the law. At the same time, reading of it by laymen will lead to a more intelligent understanding on their part of the law's defects which so frequently are found irritating.

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[3] At pp. 355-36 of this issue of the REVIEW.