

setts lawyer, the great bulk of the subject matter will prove equally helpful to the lawyer practising in any common-law jurisdiction. Moreover, although they were planned primarily for the legal fledgling, the veteran at the bar will find enough new ideas to warrant a careful reading. The American Bar Association will do well to continue to sponsor this type of advanced professional education.

RICHARD H. FIELD.*

FRAUDULENT CONVEYANCES AND PREFERENCES. Two volumes. Revised edition. By Garrard Glenn.¹ New York: Baker, Voorhis & Co. 1940. Pp. xxxi, 644; xxix, 645-1284. \$17.50.

Fraudulent Conveyances and Preferences is an essay in opinion rather than a reference book. It is often dogmatic and sometimes opinionated, but it is written with force and charm, and distinguished by an obvious authority. It will be read widely, appreciatively, and with pleasure.

The learned author lays about him with a mighty sword. His erudition doesn't weigh him down; he isn't competing with *Corpus Juris*, and the argument marches without the interruption of a thousand footnotes, caveats, qualifications, and exceptions. The footnotes, when they come, are more likely to reward you with some gossip out of the Yearbooks than with a laborious chain of names and numbers. And the structure of Mr. Glenn's argument comes out plainly; he manages to make even complicated problems sound simple. If sometimes the solution turns on a verbal distinction too lightly accepted, at least the line of his reasoning is open, and the ambiguity not hard to find.

In flavor, Mr. Glenn is a good deal like the better judges of King's Bench, a hundred years ago, those oracles whose lively conversational judgments still recall the tables and the table talk of English life. Like many a judge of King's Bench, Mr. Glenn has a creed. To him, the law is a scheme of rules and arrangements with a definite social function to perform, in this case the protection of society through the enforcement of creditors' claims.

The subject matter of the book is not fully indicated by its title. Mr. Glenn's single theme is the extent to which creditors may reach property of their debtors, and control the debtors' discretion in disposing of property. He does not limit his study to proceedings for the administration of insolvents' estates, nor is he extensively concerned with the place of such institutions in the business system. Creditors' rights² are his topic, not the system of insolvency law as a working part of the economy. His

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² "I have no apology of any sort . . . for my use of the word 'right,' or any other term for that matter, as it is commonly understood by educated men, or for refusing to adopt that Esperanto of the gymnasia which is called Hohfeldian terminology." P. 2.

chapters examine and compare the legal devices through which policy on these matters is declared: ordinary individual creditors' litigation to judgment and beyond, and the various forms of group remedy available for the administration of debtors' estates. His comments thus review crucial issues in what more orthodox law teachers would call the law of procedure, bankruptcy, property, mortgages, suretyship, and corporations.

For all its vitality and usefulness, however, a treatise of this kind needs supplementing. Mr. Glenn's book is the peer of the best big texts produced by contemporary legal scholarship; yet those texts leave much to be desired both in conception and execution. Compared with the law review article, the casebook, and even the judicial opinion, the legal text is a relatively narrow and formal aspect of scholarship in law. There are exceptions, of course; but by and large, text writing has shown less response to the times than any other part of the literature about law. The most considerable event of the generation in the field — the making of the Restatements — has helped to confine the text, rather than to enlarge its horizons. Glenn on *Fraudulent Conveyances and Preferences* is a cousin under the skin of Greenleaf, Cooley, and Story.

A single example will illustrate the point. Mr. Glenn's series of chapters on the several security contracts is a notably clear and lucid survey of the relative rights of secured and unsecured creditors in the circumstances of many litigations. Mr. Glenn is impatient of the inconsistency which permits a chattel mortgage to fail in one case, and a conditional sale to succeed in another apparently like it. He wants to be rid of useless distinctions, based on history misunderstood or misapplied. He urges the elimination of technicalities that might prevent a secured creditor's claim for priority from being considered on its merits. Yet the issue is not put fully. One wants to know who uses these contracts, when, and in what commercial situations. There may be less reason for enforcing a finance company's claim to priority over an automobile dealer's general creditors than for upholding the traditional mortgage of Blackacre. A difference of circumstance may make all the difference in the development of contract forms, and in the disposition of courts and society to allow priority. A mortgage which is sacred to Mr. Justice Douglas in a corporate reorganization is a "mere" mortgage to the same jurist when the mortgagor is a poor farmer. But Mr. Glenn tends to see a mortgage as a mortgage. He is a law reformer in the tradition of the restaters and the draftsmen of uniform state laws, and it is rather rare for him to criticize legal rules at the more practical level. Not that the book is impractical; on the contrary, it has great merit for the practitioner (though it is by no means a practitioner's handbook). But, in common with many another good text, it fails to view its subject matter as a social problem, to the resolution of which many phases of history and experience are relevant. It is a book about legal doctrines almost alone. Peppared throughout, it is true, there are comments on economic and

political issues, always racy and sometimes shrewd, but they are asides, not systematic exposition. For all its asides, Mr. Glenn's work does not provide a fully documented criticism of current trends in the development of the legal institutions it considers, nor does it offer enough guidance for the task of remolding those institutions under the impact of times to come.

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PENAL REFORM IN ENGLAND. Edited by L. Radzinowicz and J. W. Cecil Turner. Preface by P. H. Winfield. London: P. S. King and Son, Ltd. 1940. Pp. 177. 10s. 6d.

Every twenty or thirty years the conscience of the men who are teaching criminal law in one of the great civilized nations is aroused. They feel constrained by the magical circle of drilling in dry logic. They see that, however their theories may vary, the course of criminality is scarcely turned aside. They are not among the changers of social conditions and human misery. Although their science was once a system carefully developed to safeguard the weak and helpless from ignorance and arbitrary power, it has become isolated and sterile. Thus every twenty or thirty years in one of those strange "waves" which move the judged and their judges alike, the men of the penal law give themselves over to thoughts of repentance and efforts at reform.

Surgery is an essential part of the healing art. But nobody would dare to call surgery an exact science, if surgeons were not able, by an intimate knowledge of anatomy, physiology, and pathology to diagnose justly, and to apply the right after-treatment. Surgery is only a part of a large body of knowledge; it is unscientific and inefficient without the totality of information concerning the disordered organism.

Exactly the same sort of reflection is induced when Professor Winfield writes that forty years ago not a single textbook on English criminal law dealt with either the problem of punishment or the sciences allied to it. Kenny's *Outlines of Criminal Law*, published in 1902, was the first book which discussed, in a most suggestive chapter, the problems of punishment. A book issued only a few weeks ago¹ illustrates a similar trend in the United States toward combining the social and legal aspects of criminology. The editors of the present book go further. The writer is reminded of his own demands at innumerable congresses twenty years ago as he reads: "It is not so long ago since criminal science was identified with the study of criminal law. . . . The fundamental error of this conception has come to be increasingly appreciated. Criminal law . . . is only one branch, and by no means the most important branch of crimi-

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¹ WOOD AND WAITE, *CRIME AND ITS TREATMENT* (1941).