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Book Reviews

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Book Reviews


Until this year (1940) there have been only two general works on administrative law in this country—Goodnow's Principles of the Administrative Law of the United States, which appeared in 1905, and Freund's Administrative Powers over Persons and Property, which appeared in 1928. We are now indebted to Professor Hart for a third—An Introduction to Administrative Law: With Selected Cases. The development in the field has been so rapid, however, that one may with reason say that Professor Hart's book is the only general and comprehensive text on the subject as we have now come to know it. This, of course, is important for obvious reasons from the point of view of the practitioner and the law school student who would be a practitioner—but it is perhaps even more important from another point of view. We now have three monuments from which to plot a curve to tell us whence we have come and where we are going.

As has been many times indicated, our approach to administrative law has been vertical. That is, we have had an administrative law of utility regulation, of railroad regulation, and of many other fields. As Frankfurter and Davison point out, there are (or were) sound reasons for such an approach.1 But one wonders to what extent this continuing verticality is encouraged and fostered for no other reason than the vertical approach of all our digest systems. Have we not reached a point at which we may profit from cross-fertilization among our many vertical compartments in administrative law? Professor Hart's book is a substantial step in the direction of a horizontal approach.

With respect to approach, one more word must be said of this new book. It is definitely public administration conscious throughout. Note, for example, the chapter entitled “Responsible Bureaucracy And The Law,” and the way in which the Arlidge and Morgan cases are distinguished. On the latter point, as Professor Hart indicates, the matter of “ministerial responsibility” in England is crucial. But compare the fumbling and inarticulate discussion of the Arlidge case by our supreme court in the first Morgan case.2 Incidentally, it is to be regretted that Lord Haldane's opinion in the Arlidge case is not quoted at least in part, rather than, or in addition to, the quotation from Lord Shaw.

As to subject matter, it may be said that Professor Hart covers substantially the entire field of modern administrative law. His book is divided into five parts entitled respectively: “Public Office and Public Officers,” “Powers of Adminis-

1. FRANKFURTER & DAVISON, CASES ON ADMINISTRATIVE LAW (1932) c. 8.
trative Authorities," "Scope and Limits of Administrative Powers," "Enforcement of Administrative Decisions," and "Remedies Against Administrative Action." He consciously and with full acknowledgment draws heavily upon the ideas and information of others—in fact not the least valuable aspect of his work lies in the orderly presentation of material which may only otherwise be found piecemeal in scores of more specialized books and law review articles. Finally "the decisions in some 150 cases, the essential portions of which are quoted or digested, are closely integrated with the text matter." Extremely valuable is the bibliography of more than fourteen pages at the close of the book.

Professor Hart indicates that his book was intended as a text to be used in courses on administrative law or as a supplement in courses on public administration. There is every reason to believe it will be used also, and to great advantage, by many practicing lawyers—especially those who have not in their formal training had the advantage of a systematic approach to this increasingly important field of law.

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WALLACE MENDELSON


According to Thorstein Veblen, "The lawyer is exclusively occupied with the details of predatory fraud, either in achieving or checkmating chicane." He has had a busy time of it, too, for as Coke observed in reporting that touchstone of all research in the law of Fraudulent Conveyances, "crescit in orbe dolus." Professor Glenn has spent a good deal of time in aiding his fellow lawyers in the more virtuous side of their labors. His numerous law review articles and his several books have pioneered modern investigation in this exceedingly practical field of the law, and he writes with authority, as well as unusual clarity and grace.

Professor Glenn might in one sense be described as a modern Blackstone. He finds in the law an orderliness and an inevitable logic that, either in the decisions or in a priori rationalization, has escaped the reviewer. This trait seems to me to be both a strength and a weakness. It is not hard to find conflicting authority which the author has simply disregarded, but in his clear and well integrated philosophy of the subject he not only points the way which might reasonably be taken in future cases, but he also throws into bold relief the arguments of those who would disagree. That is a substantial achievement.

The main part of the book follows closely the pattern of the first edition, and though the subject is considerably elaborated and additional historical research

1. Theory of the Leisure Class.
2. Twyne's Case, 3 Coke 80b (Star Chamber, 1601).
3. Glenn, Creditors Rights (1915); Glenn, Fraudulent Conveyances (1921); Glenn, Liquidation (1935).
is evident, the author has changed few of his earlier conclusions. The material on Preferences is new and valuable. The subject is usually considered with Bankruptcy, but its affiliation to problems of Fraudulent Conveyances is obvious. It is especially useful to consider how the same transaction—for example, a conditional sale or chattel mortgage—may or may not come within the established doctrines of either fraudulent conveyances or preferences or both.

In no work of this scope could perfect consistency be maintained,4 nor could one expect unanimity of opinion among the readers on every point. He asserts the traditional view that a judgment lien gives no interest in the real estate.5 This has always seemed to me to be a stubborn refusal to acknowledge a fact, for it has so many of the incidents of a mortgage or other security transaction as to deserve similar classification. In Louisiana it is known as a “judicial mortgage,” and in Virginia it is enforced by foreclosure. In all states it follows the land and its priority cannot be displaced without act of the creditor.

He advocates the requirement of a judgment and issue of execution as a condition of a creditor’s bill, but sees no virtue in an additional requirement that the execution be returned nulla bona. Execution should have issued because the judgment alone “should not be treated as a lien upon property which the debtor does not own, even if his transfer was in fact a fraudulent conveyance.”6 The requirement of a return nulla bona “permits admittedly fraudulent grantors and grantees to choose what property subject to execution shall be seized and sold by a judgment creditor.”7 But if the judgment creditor may levy directly upon the fraudulently conveyed property under legal execution, as he may in Missouri,8 why should not the judgment, which gives him this right to take the property, be considered to give him a legal lien upon it? And in Missouri, at least, the debtor has a positive statutory right to choose what property shall be levied upon first,9 and the fraudulent conveyance being final between grantor and grantee, the latter should be able to insist upon proof that the right was nugatory.

These are but examples of difference of opinion. Occasionally one encounters an assertion subject to more serious objection.

Discussing the history of judgment liens, the author observes “... this led to the rule that the debtor’s land was ‘bound from the day the judgment was entered and docketed.’ But the idea was of little practical effect, because the Chancery refused to help a judgment creditor against anyone who had purchased from the debtor without actual notice of the judgment. And so in this country we started with the idea that the judgment, of itself, was of no effect against an intervening purchaser from the debtor.”10

4. E. g., cf. §§ 29 and 73.
5. § 20, p. 40.
6. § 87, p. 147.
7. Ibid.
Professor Glenn's statement is virtually contradicted by his own discussion of the Statute of Frauds, which provided that the lien should date from entry only because of the hardship resulting from the old rule that "... the _elegit_ of a judgment creditor would prevail over a prior deed or mortgage which happened to have been made during the current term of court."11 And in one of the earliest American cases it was squarely held that a judgment lien bound the land in the hands of a subsequent purchaser from the debtor.12

Of federal judgment liens, he says:13 "The federal judgment is a lien on all lands within the district although it may embrace a number of counties; and, upon being docketed in the clerk's office of any other district within the same State, the lien of the judgment will be extended to counties within that district also. This rule does not apply to any State which may provide by its own laws for the docketing of federal judgments in her county offices, and in a State of that class the federal judgment will be a lien on land only when docketed according to state law", citing _Rhea v. Smith_14 and several law review articles thereon.

The trouble with this statement is that in _Rhea v. Smith_, although the Missouri statute did provide for the docketing of federal judgments in county offices, the unfiled federal judgment was nevertheless held a lien upon the land in the county of rendition and said to be a lien throughout the district. Evidently the problem is more complex than indicated. And while there existed a split of authority over whether, independent of the Act of 1888,15 the federal judgment lien was district wide16 or state wide,17 no court has passed upon the proposition, and there is no reason for supposing, that by recording with the federal clerk of another district of the same state the judgment can be made a lien throughout the latter district.

Of levy by the sheriff, our author says: "... the sheriff is the agent of the judgment creditor, who accordingly is liable in tort to the debtor or third persons, for any wrongful act of the sheriff which cannot be attributed to sheer wilfulness on the latter's part."18 Granting that the court will be quick to find authorization or ratification by the execution creditor, it is not the law in Missouri, at least, that the creditor is inevitably bound by the conduct of the sheriff who exceeds the instruction of his writ.19

Writing of _lis pendens_, he asserts: "Naturally, therefore, this severe doctrine has been surrounded by safeguards. Thus, it is limited to the case of land as distinct from personal property, or at least commercial chattels; and

11. § 21, p. 43.
12. Ridgely v. Gartrell, 3 Harris & McHenry 449 (Md. 1796).
18. § 19, p. 35.
our States generally provide that the suit shall operate as *lis pendens* only if the plaintiff duly files a statutory notice with the country clerk or registrar of conveyances.”

The prevailing view in America applies the principle of *lis pendens* to actions concerning personal property. It is proper to call attention again to the fragmentary character of the Missouri recording statute. Missouri Revised Statutes, 1929, Section 3155, conditions the *lis pendens* of suits in equity affecting real estate upon a record with the recorder of deeds in the county where the real estate is situated. We have seen that the doctrine of *lis pendens* applies to suits affecting personality. It also applies to actions at law affecting real estate. In neither of the latter situations is recording necessary in Missouri, a state of the law which should certainly be remedied.

Investigation of the authorities cited generally discloses the confusion or contradiction in the law which the author disregards in the text. From the standpoint of the practitioner it is perhaps an objection that so many secondary authorities are cited, which may not be available and which must in turn be checked by examination of the decisions, and the multitidinous case law so rigidly pruned, but the technique leaves more room for the author's rationalizations. Law review material is frequently referred to.

Not only is it the only modern book on the subject, but it is also undoubtedly the most comprehensive and best. The mechanics of the book are quite as good as the text.

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20. § 73, p. 118.

21. 1 Freeman, *Judgments* (5th ed. 1925) § 524; Note (1912) 12 Col. L. Rev. 361; Carr v. Lewis Coal Co., 96 Mo. 149 (1888); Dodd v. Lee, 57 Mo. App. 167 (1894).


23. Especially the Virginia Law Review, possession of which is virtually a *sine qua non* for effective use of this treatise.