Equitable Remedies, Injunctions and Specific Performance, by I. C. F. SPRY, LL.D. (The Law Book Company Ltd, Australia, 1971), pp. i-xlii, 1-603. Australian Price $14.00.

Dr Spry's book, which earned him his Doctorate of Laws, sets out to analyse injunctive relief and specific performance. As such, it fills a long felt need for it is many years since the last edition of what have been the standard text books in this field were last published. *Fry on Specific Performance* is fifty years out of date and *Kerr on Injunctions* is only a decade less. The vast body of case law that has developed in that half century attests the need for Dr Spry's work.

The book is, as one would expect the work of Dr Spry to be, a careful analysis of cases and principles clearly and lucidly expounded. It presents a neat blending of history and practicability although, from the practitioner's viewpoint, it may be said to raise questions that it does not answer. The practitioner, for example, may find the final paragraph of the book (which concludes the analysis of property rights enforced by injunction) to be somewhat cryptic, the author saying of an agreement that

> if it does not become specifically enforceable, it may be that on the one hand, as a matter of intention, the parties are shown to have intended that the transferee should be beneficially entitled to the material property only if, for example, the remainder of the agreement is performed *in specie*; or else it may appear on the other hand that the transferee is intended to take that property beneficially in any case, that is, whether or not the remainder of the agreement is performed *in specie*, although here a further difficulty may arise if it is subsequently sought to rescind the agreement either at law or in equity. (p. 571)

One of the problems which Dr Spry has had to face is that, with the growing use of injunctive relief and its application to a widening range of activities, he has necessarily been drawn into a consideration of aspects of law wider that the title of the book would suggest. Thus, for example, he has almost inevitably had to consider aspects of the law of defamation because of the important question as to whether injunctive relief is available to restrain a publication of threatened defamatory material or the repetition of defamatory material already published. At the same time, he has no doubt borne in mind that matters of this nature arise more by way of side wind than as a development of the main theme. The result is a lack of depth in the consideration of these aspects. Thus, Dr Spry affirms the proposition that

> it was soon accepted that a common law injunction would be awarded, in an appropriate case, to restrain the publication of a libel or slander (p. 299)

(his qualification on that proposition is not relevant to the present comment). Although three authorities are cited, there is no reference to the more current authorities. It is true that Dr Spry does use the words 'in an appropriate case' to qualify his proposition, but it may be questioned as to whether this gives sufficient guidance to the practitioner that there is recent authority for the view that an injunction will not lie to restrain the publication of a libel or slander after a plea of justification. That an injunction will not lie after such a plea has been firmly stated in *Thomson v. Times Newspapers Ltd.*[1]

In his consideration of the use of the injunction to restrain breach of the criminal law (a use of this equitable remedy which has been considerably strengthened by the decisions in *Attorney-General v. Harris*,[2] and *Cooney v. Ku-ring-gai Municipal Council*[3]) Dr Spry instances the various matters which the court will take into account in determining whether or not to grant the remedy but he does not consider the extent to which the likelihood of repetition of the illegal act is a factor in determining the exercise of the discretion—an issue on which he

1 [1969] 1 W.L.R. 1236, 1240 *per* Salmon, L.J. See also *Fraser v. Evans* [1969] 1 Q.B. 349.
2 [1961] 1 Q.B. 74.
3 (1963) 114 C.L.R. 582.

could have referred the reader to cases such as *Woollahra Municipal Council v. Morris.*[4]

Dr Spry devotes a number of pages to a consideration of the exclusion of common law and equitable injunctions by express statutory provisions. It is unfortunate that we do not also have the benefit of his views upon the important question as to whether, when injunctive relief is provided for by statute, the equitable principles for the granting or refusing of injunctions still apply.

In his consideration of the exclusion by statute of the power to grant injunctions, Dr Spry states that

> a court of equity will not consider that its power to grant an injunction has been lost unless it appears as a matter of legislative intention that the penalty or remedy in question is to be exclusive. (p. 330)

Is that proposition perhaps capable of being stated more widely? Is it, as stated, too confined? Is it not an instance of the application of the basic principle that the jurisdiction of the superior courts is not taken away except by express words or necessary intendment? That is a well established principle. Dr Spry, in the following sentence, appears to be putting the matter more narrowly, for he says:

> It has indeed been suggested that such an intention will be found only if there is an express indication that the material statutory procedure is to be exclusive. (p. 330)

The principle that legislation is to be interpreted against the taking away of the powers of the superior courts is, it is submitted, a principle wider than one applying to equitable relief as such. It has been established at least as far back as *Albon v. Pyke*;[5] and its frequent modern application shows that it is certainly not confined to courts of equity.

In his detailed and very useful consideration of laches as a defence to an action for an injunction, Dr Spry unfortunately fails to consider a question which is likely to become of increasing importance. That is the question as to whether delay by a statutory authority which subsequently seeks an injunction can be relevant at all in a case in which a claim for the injunction is made in order to enforce requirements of statute or of subordinate legislation.[6] It would have been interesting to have had Dr Spry's views as to the circumstances in which delay could be relied upon, if at all, in cases of this nature.

In his very comprehensive consideration of injunctions, Dr Spry of course considers the special circumstances which arise when the applicant for the injunction is the Attorney-General, although not apparently drawing any distinction between the case in which the proceedings are brought by the Attorney-General *virtute officio* and a relator action. As to proceedings brought by the Attorney-General *virtute officio,* Dr Spry says:

> The proper view, however, appears to be that, whilst the fact that the plaintiff is the Attorney-General suing on behalf of the public is a relevant consideration, nonetheless a court of equity is obliged to exercise its discretion and must take account of matters such as hardship or acquiescence as much here as in proceedings by any other plaintiff. (p. 481)

That may, perhaps, understate the position. For example, in one of the more recent authorities (which may, of course, have been published after Dr Spry had

4 (1966) 12 L.G.R.A. 359.
5 (1842) 4 M. & G. 421, 424; 134 E.R. 172.
6 As a question the answer to which is not at present clear it has arisen in at least three cases before the Supreme Court of New South Wales in its equitable jurisdiction in the past five years. See *Gunnedah Municipal Council v. White* (1966) 13 L.G.R.A. 336; *Holroyd Municipal Council v. Fair Deal Car Sales Pty Ltd* (1969) 18 L.G.R.A. 44; *Sutherland Shire Council v. Bartlett* (1969) 18 L.G.R.A. 91.

completed his manuscript) Megarry J., whilst recognising that the court does retain its discretion to grant or withhold an injunction, said that

> it . . . should pay great attention to the fact that the proceedings have been brought by the Attorney-General, and . . ., save in exceptional circumstances, an application by him for an injunction to restrain a breach of the law should not be refused.[7]

Dr Spry's book has been written in recognition of the fact that there are many who today may be insufficiently familiar with the basic principles governing the granting or withholding of equitable relief. It is a feature of modern law teaching that he plainly regrets, and his regret appears to be a valid one. His text has been written, and very clearly written, to give the greatest assistance to students as well as to those practitioners who, familiar with this field, nevertheless need a learned treatise to turn to. It is unfortunate, therefore, that his book does not have the benefit of a more detailed index. Whilst the practitioner familiar with this field should be able to find what he seeks readily, and particularly because of the clear use of subheadings in the text itself, a reader who is not so familiar may be hampered by the lack of detail in the index.

In the forefront of his book, Dr Spry sets out Aeschylus' dictum that
He profiteth who learns wisdom with groaning.

The reader of Dr Spry's work will learn wisdom, but without the groaning.

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7 *Attorney-General v. Melville Constructions Company Ltd* (1968) 20 P. & C.R. 131, 134.

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