case of the purchase of a Torrens Title property at least a layman can satisfactorily do his own conveyancing.

While this proposition may in fact be true it is certainly not true to say that if he follows the advice given in this book he will do so efficaciously and without danger. Without wishing to particularize in any great detail, deficiencies and omissions spring to the eye.

For example, the purchaser is advised to consult various Governmental and Semi-governmental departments and authorities but is only given the merest smattering of advice as to how to interpret the replies to his enquiries.

Again nothing is said about Certificates under Section 317A of the Local Government Act 1919, or about the effects of Town Planning restrictions which may be crucial to a purchaser. Also, the possible detriment to a purchaser of the existence of a Water Board main sewer is not dealt with.

There are many other areas of a like nature which are simply not covered at all. In regard to purchases subject to a tenancy, for instance, the purchaser is given careful instructions as to how to require from the vendor and serve on the tenant a Notice of Attornment but next-to-nothing is said about the duty of the purchaser to check prior to completion the rights of a third party in possession to which he will take subject.

I must mention also a few curiosities: a purchaser is exorted to search in the Causes, Writs and Orders Register, which, in New South Wales at least, no longer affects Torrens Title land; again a purchaser will look long and hard for a "Land Tax Department (Federal)". Finally a vendor if he includes in his particulars of title a mortgage and caveat (which are in fact to be removed on completion) he will hardly discharge his obligation to supply proper particulars of title.

To be fair I must say that I have looked at the book only from the point of view of New South Wales, as I am simply not qualified to speak in regard to other States; it may be that the book will have a better application in some other part of the Commonwealth.

However, for New South Wales, I regret to say that it will simply not serve as an accurate guide for people who attempt to do their own conveyancing. It will however, give the layman some idea of what is involved even in a simple conveyancing transaction and in certain areas, such as in regard to inspection of the property, it will give him advice which is too often overlooked by solicitors who tend to advise their clients only on what they would regard as strictly legal matters.

N. J. MOSES*

Equitable Remedies, by I. C. F. Spry, LL.D. Melbourne, The Law Book Company Limited, 1971, XLII and 571 pp. plus Index. $18.60.

Dr. Spry's book, published in 1971, is an event of some importance in Australian legal publishing. It is a treatise not (as one might expect, from the title) on equitable remedies generally, but on the two main equitable remedies of specific performance and injunctions Nothing comparable to it has been published in Australia since the appearance of Sir Frederick Jordan's *Chapters in Equity* more than forty years ago, and that is a book which is now both out of print and out of date. The need for a work like Spry's is immense, not only because there is no rival contemporary Australian work dealing with the subject but also because the English situation is almost equally unsatisfactory. When Dr. Spry wrote, the last edition of Kerr on *Injunctions* was forty years old and the last edition of Fry's *Specific Performance* was fifty years old. The last edition of Ashburner's *Equity* appeared in 1933. And the current

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English general equity textbooks (like Snell), not only totally disregard the Australian experience, but also (with the honourable exception of Pettit) bear little relationship to true legal scholarship.

Dr. Spry's book really deals with three topics: specific performance (pp. 50-296), injunctions (pp. 297-529) and (as collateral thereto) damages (pp. 530-571).

The section on specific performance is the most successful. Most, if not all, of the important Australian cases are referred to. The concept of "mutuality" is sensibly analyzed (pp. 82-93). The notion that a Court of Equity must necessarily refuse to decree specific performance of a contract if the decree would involve continued curial supervision of the performance of the contract is demonstrated to be valid only subject to very considerable limitations (pp. 93-101). However, even this section has its faults. Any student wishing to understand what is meant in *Maddison* v. *Alderson*[1] by the statement that the doctrine of part performance arises not out of equity's refusal to permit the Statute of Frauds to be used as an engine of fraud but out of "all the equities" remains as mystified after reading Spry as he was beforehand. Again, the decision in *Tasker* v. *Small*[2] is mentioned once only—in a footnote on p. 292, after the words "As to the proper parties to proceedings for specific performance, see generally . . ." Such understatement suggests that perhaps the learned author did not really appreciate the appalling practical problems to which the rule in *Tasker* v. *Small* gives rise. In the situation where V contracts to sell land firstly to P1 and then to P2, and P2 asserts that his equitable interest takes priority over that of P1, what is the hapless pleader to do if both P1 and P2 commence separate proceedings against V and V defends neither of them? Neither P1 nor P2 can join the other as a party in his suit. One searches in vain in Dr. Spry's work not only for one solution to such a problem, but also for a discussion of it. More importantly, one has the feeling that Dr. Spry does not quite come to grips with the realities of his subject. Consider, for example, the relationship between the remedy of injunction in contract and the remedy of specific performance. Is it true that the two remedies are distinct? A court of equity will usually grant an injunction to restrain breach of a negative stipulation in a contract at least if it be negative in substance as well as in form. Is this not, as Lord Cairns recognized in *Doherty* v. *Allman*,[3] a decree of specific performance? Again, it is clear that a Court of Equity will often grant a mandatory injunction to compel performance of a contractual promise as distinct from the whole contract, at least if it is severable from the rest of the contract. This is usually called by the Courts "an injunction", but what in fact is it other than a limited decree of specific performance? Dodging the issue, perhaps unconsciously, Dr. Spry implies that such orders are not injunctions at all (p. 465). But one cannot be wiser than the Courts, and if the Courts classify such orders as injunctions they are injunctions. The truth must be either that Courts like the Supreme Court of New South Wales in *Burns Philp Trust Co. Pty. Ltd.* v. *Kwikasair Freightlines Ltd.*[4] do not know what they are talking about when they classify such orders as injunctions, in which case it behoves Dr. Spry to expose their errors, or that there is no real distinction between an injunction to restrain breach of or compel performance of a contractual promise and a decree of partial specific performance of a contract, in which case he should nakedly assert that fact. He does neither, preferring the comfort of confusion. And the vice does not rest there. It results in a failure roundly

[1] (1883) 8 A.C. 467.
[2] (1834) 3 My & Cr. 63.
[3] (1878) 3 App. Cas. 709.
[4] (1963) 63 S.R. (N.S.W.) 492.

to denounce the shibboleth that one cannot get specific performance of part of a contract; and it also results in a failure to make explicit that when judges talk of "specific performance in its secondary sense" they are talking of injunctions.

When Dr. Spry comes to deal with injunctions the results are lamentable. When he discusses the classification of injunctions, he omits to mention the most important one: the distinction between injunctions in aid of legal rights and injunctions in aid of purely equitable rights. In a remarkable section headed "Requirement of Proprietary Interest" (pp. 307-311), he essays the view that it would be artificial to regard such rights as patent rights or trademark rights or goodwill as "proprietary". One can only ask in astonishment, Why? In the same section he does not once allude to the fact that the requirement of a proprietary interest only existed in the case of injunctions in aid of purely legal rights. Nor does he seek to explain why Courts of Equity never granted injunctions to restrain defamatory publications or trespass to the person, if the requirement that a plaintiff seeking an injunction in aid of a purely legal right must demonstrate that he was vindicating a proprietary interest were mythical. His discussion of many matters is ponderous and diffuse: Why, for example, should one be treated to five pages of hand-wringing anguish on the concept of "the balance of convenience", when all that can usefully be said on that topic can be deduced from its name? Dr. Spry also ignores many crucial Australian cases. Thus he does not cite cases like *Dowse and Ruby* v. *Wynyard Holdings Ltd.*,[5] *Howes* v. *Gosford Shire Council*[6] and *Baker* v. *Gough*.[7] But, most importantly of all, he attempts to discuss the equitable remedy of injunction without reference to any particular examples; he limits himself to general principles. To do this is like writing on criminal law without mentioning any crimes, or writing a recipe book without actually mentioning food.

To have any significance this book should have discussed such questions as in what (if any) circumstances a member of a club can obtain an injunction against the committee of the club, to what (if any) extent the decision in *Cowell* v. *Rosehill Racecourse Co. Ltd.*[8] is still good law, or in what circumstances and on what principles one can now obtain an injunction to restrain a defamatory publication. It is only by considering such problems that one can appreciate the reality and meaning of the remedy of the injunction, but Dr. Spry eschews such considerations.

The section on damages is, if anything, even worse. One example will suffice: he assumes (p. 542) without discussion that Lord Cairns' Act was designed not only to enable Courts of Equity to award damages in lieu of or in addition to granting relief in aid of a legal right, but also to empower them to grant damages in lieu of or in addition to granting relief in aid of an equitable right.

Finally, if it is necessary to invoke a passage from the "Eumenides" of Aeschylus on the fly-leaf of the book, why, O Zeus, should Dr. Spry turn to the textual version of Gilbert Murray?

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[5] (1962) N.S.W.R. 252.
[6] (1962) N.S.W.R. 58.
[7] (1963) N.S.W.R. 1345.
[8] (1937) 56 C.L.R. 605.

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