

FRY: A TREATISE ON THE SPECIFIC PERFORMANCE OF CONTRACTS. By G. R. NORTHCOTE, (Reprint of the 6th edition of 1921). [London: Sweet and Maxwell in co-operation with Ashford Press Publishing. 1985. li + 741 + 108 (index) pp. Hardcover: £75.00]

THIS is a reprint of the 1921 edition of the well known work. It is not an updated edition that will be useful as a treatise of the existing law; and cannot be compared with current works like Spry's *Equitable Remedies*, Jones and Goodhart's *Specific Performance* and Sharpe's *Injunctions and Specific Performance*.

*Fry on Specific Performance* was once the main statement on the law governing specific performance. Its influence was felt even as recently as 1977 when the English Court of Appeal in *Price v. Strange*<sup>1</sup> very carefully<sup>2</sup> considered *Fry's* position on the time at which mutuality is required<sup>2</sup> before disagreeing with it.

The book's historical account of the jurisdiction to award specific performance<sup>3</sup> will remain valid; and its statement of the basic principles upon which specific performance will be granted or refused remain generally accurate to this day. But there have been many developments since this edition was published in 1921. Most of the cases cited were decided before the first world war. Different cases might now be cited for the same propositions, and some refinements may have been made<sup>4</sup>. But because the general principles governing the award of specific performance are very broadly stated, they are largely the same as the ones that are accepted today<sup>5</sup>. However, the fact that there have been changes makes this reprint a historical reference work rather than a first reference point for the lawyer.

Subsequent case law makes certain statements inaccurate on the present law. The 1974 case of *Steadman v. Steadman*<sup>6</sup> would require a re-writing of para. 614 as the payment of money can now, in some circumstances constitute part-performance. *Beswick v. Beswick*<sup>7</sup> does not go on the adequacy of damages in the conventional sense and is a case where damages was seen as an inadequate remedy because it might have been nominal. The courts are now less hesitant to supervise, and would order the performance of building contracts<sup>8</sup> and even contracts of service<sup>9</sup> in appropriate circumstances. And *Fry's* position on the time at which mutuality must exist has been judicially disapproved<sup>10</sup>.

<sup>1</sup> [1978]Ch. 337.

<sup>2</sup> Paras. 460 and 463.

<sup>3</sup> For example, Chapter 1 deals with the origin and character of the jurisdiction.

<sup>4</sup> For example, *Beswick v. Beswick* [1968] A.C. 58 expands the meaning of 'inadequacy of damages' by extending the jurisdiction to order specific performance to situations where the pecuniary loss is nominal.

<sup>5</sup> For example, *cf.* the list of instances of when specific performance will be granted stated in *Fry* at p. 22 with that in Chapter 2 of Jones and Goodhart, *Specific Performance*, 1986.

<sup>6</sup> [1974] Q.B. 161

<sup>7</sup> [1968] A.C. 58

<sup>8</sup> *Cf. Fry* pp.47, 201, 395 & 396 and Jones and Goodhart, *Specific Performance* pp. 140-144.

<sup>9</sup> *Hill v. C.A. Parsons & Co. Ltd.* [1972] Ch. 305; *C. H. Giles & Co. Ltd. v. Morris* [1972] 1 W.L.R. 307. *Cf. Fry* paras. 852-866.

<sup>10</sup> *Cf. Fry*, paras. 460, 463 and *Price v. Strange*, *supra* n. 1.

Considering the changes that have occurred, the busy practitioner will be better off with a more recent book, though the academic lawyer and the collector would take delight in the fact that they can now buy a newly printed copy of this classic work off the shelves of the law book shop. One can only speculate as to why the owners of the copyright decided to reprint this work instead of producing an updated edition.

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