

is fittingly dedicated to Charles F Maxwell, "the founder of modern law publishing in Australia". One of this book's most engaging aspects, of which Maxwell would no doubt be proud, is the clear impression it conveys of the early vitality of indigenous Australian jurisprudence. □ Penny Wines

## Equitable Damages

Peter M McDermott

Butterworths, 1994  
RRP \$70.00

One of the first impressions upon reading this book is the depth of the research that is reflected throughout the analysis it contains. As the Rt Hon. Sir Robert Megarry notes in the foreword to *Equitable Damages*, "[t]he author has ranged far and wide in his research for this book. It is remarkably comprehensive and thorough, both geographically and within the various jurisdictions." An indication of the scope of this work may be found in the Appendix which outlines the statutory provisions dealing with the jurisdiction to award equitable damages in England and Ireland, each of the Australian jurisdictions, New Zealand, eight Canadian jurisdictions and five Commonwealth jurisdictions. Each of these jurisdictions is dealt with in turn in chapters 12 to 15 of *Equitable Damages*.

The structure of the book is logical and approachable. It commences with an examination of the original jurisdiction of the Court of Chancery to award damages (see further below), considers reform prior to the *Judicature Acts* and then analyses the circumstances in which the remedy will be available. Chapter 10 is an extremely useful collection of and commentary on the cases dealing with the procedural aspects of seeking equitable damages. For example, at 10.8, McDermott deals with the suggestion that there must be a claim for equitable relief before jurisdiction under *Lord Cairn's Act* will exist: *Williamson v Friend* ([1901] 1 SR (NSW) Eq 23). Relying on more modern Canadian and Queensland authorities he concludes that such statements take an unduly narrow view of the jurisdiction.

One of the most interesting aspects of *Equitable Damages* is that although McDermott acknowledges his indebtedness to other commentators, he does not fail to take issue with them when the occasion seems appropriate. One instance of this is the appropriate interpretation of the decision in *Hooker v Arthur* ([1671-1672] 2 Ch Rep 62; 21 ER 616) and, in particular, whether the case is authority for the proposition that "Chancery would not entertain an action for damages, in that case for breach of covenant in a lease, where this was the principal relief sought". R P Meagher, W M C Gummow and J R F Lehané, *Equity - Doctrines and Remedies*, 3rd ed., Butterworths, Sydney, 1992 [2305] (cf the decision of Lord Nottingham in *Cleaton v Gower* ([1674] Cas t F 164; 23 ER 90). On the basis that *Hooker v Arthur* arose in

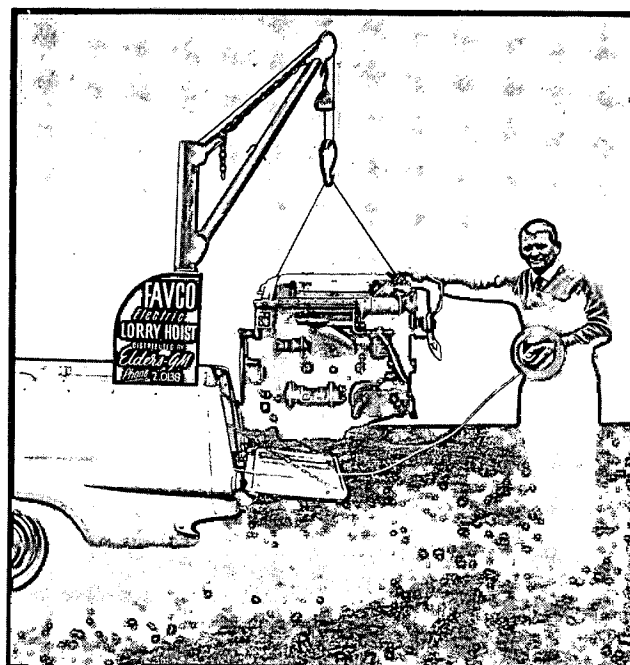
circumstances where the plaintiff had previously defended an action in law in which he claimed damages were improperly claimed and thus sought to invoke the jurisdiction of Chancery, McDermott compellingly argues that the case is more appropriately characterised as authority that the Court of Chancery would not act as an appellate tribunal to review an action at law (page 14). This is, as he points out, consistent with the then operating general principle that "a Cause shall not be examined upon Equity in the Court of Requests, Chancery, or other Court of Equity, after Judgment at the Common Law" (1 Eq Cas Abr 130; 21 ER 433).

In his Preface the author states that he considered the subject of equitable damages warranted discrete treatment in a book where the leading authorities are gathered for the convenience of practitioners. *Equitable Damages* establishes that this was clearly the case and is a treatment of the subject upon which many will no doubt come to rely. □

Penny Wines

## Judicial Elevation

A former workmate of Mr Justice Ireland donated this advertisement to Bar News to show the Bar what his Honour was doing in the early 1960s. No doubt his Honour was checking the hoist to ensure it complied with the *Scaffolding and Lifts Act 1912* (NSW).



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