Williams Practice of the Supreme Court of Victoria in its Civil Jurisdiction, Vols 1 and 2, by NEIL J. WILLIAMS (2nd ed., Butterworths Pty Ltd, Australia, 1973), pp. 5-2880. ISBN 0 409 46280.

Ten years ago the profession enthusiastically welcomed the appearance of this work. The first edition comprised a bound volume containing Orders 1 to 36 of the civil jurisdiction of the Supreme Court of Victoria and annotations thereto, and a loose leaf folder with the rest of the Orders, unannotated. It was then stated that annotations to the remainder of the Orders would issue from time to time, and that the bound volume would be kept up to date with supplementary materials. With this, the practising profession felt that ultimately it would have a reliable and authoritative book on the procedure and practice in the civil jurisdiction of the Supreme Court of Victoria, as there had been no such practice book since 1884.

The second edition has been published complete in two volumes that take the form of a loose leaf system which readily enables the work to be kept up to date by substituting new pages as the need requires. Indeed, when this edition first came out, it did not have an index which was a serious omission and one causing difficulty and inconvenience to both the busy and inexperienced practitioner alike. However, an index has now been provided, which demonstrates an advantage of the loose leaf system. Regretfully the index is not up to the standard of the rest of this work. A practice book requires an extensive and comprehensive index if the mass of material contained in it is to be unlocked to the uninitiated. The index is only a quarter of the size of the index to its English counterpart, The Annual Practice. One hopes this deficiency will be remedied in the near future. A table of cases, which often is another avenue by which a wanted part of the book can be found, could also be usefully supplied.

To give a review of a practice book, as compared with other books, is, in one sense, simple, for there is no purpose to be served in debating whether the myriad of cases cited are authorities for the precise shade of meaning given to them in the text. In any event, one has very little quarrel with the author on this. The aim of a practice book must be to give practical aid and assistance to the practitioner in his search for the solution to his procedural problem. There can be no doubt that this work admirably and clearly fulfils this aim.

The text of the work displays great industry on the part of the author. To annotate the Supreme Court Rules, which govern all facets of every kind of civil litigation, requires the collation and mastery of a vast amount of diffuse material, and this, the author has done with success. The clarity with which cases are discussed and principles stated, and the comprehensiveness of the annotations, make the work a notable contribution to the legal writings in this State, as well as being an indispensable aid to the practitioner.

A very minor suggestion may be made to improve this work: it would be useful, where an Order or Rule contemplates that some application can or may need to be made to the Court or a Master, if the form of such application (*i.e.* Notice of Motion, Summons, or how otherwise) be mentioned in a separate annotation to the Order or Rule, as well as particulars of the nature of the material necessary to support such an application.

The Supreme Court Act and the Foreign Judgments Act are contained in the loose leaf folders. It is indeed a pity that these Acts were not annotated, and one hopes that this will be done at some stage in the future and issued as part of the regular service keeping the work up to date.

In addition, it would be useful if the Commonwealth Service and Execution of Process Act 1901-1968 was included and annotated; the effects of the provisions of this Act are mentioned in the book, but this is no substitute for the actual words of the Act. Other Acts that could be usefully included, are Parts I and IV of the Imprisonment of Fraudulent Debtors Act, and Part I of the Instruments Act

(Summary proceedings on Bills of Exchange). Both the current County Court practice books contain all these Acts and the convenience of their being collected together for a particular jurisdiction, is proven.

Since 1971, Mr Williams has held the post of an Associate Professor of Law at Osgoode Hall Law School, York University, in Canada, and, accordingly, the servicing of this work has been carried out by two local practitioners, Mr David L. Bailey and Mr Ewan K. Evans. The replacement pages received since the publication of this edition, maintain the high standard of the book.

It is indeed difficult to say more concerning a practice book of such excellence and quality as this one, and this reviewer trusts that he may be forgiven if the rest of this review is devoted to some aspects of the Preface to this edition.

In his somewhat challenging and thought provoking Preface, Mr Williams' cry for change meets with a responsive reception. However, he writes as though we have been somnolent as regards change and satisfied over the years just to plug the leaks whenever they appeared in the procedural rules. But for long there has been an awareness for the need to bring the litigation process into harmony with the requirements of the community which it serves. This awareness has extended to the need to provide remedies or benefits for certain claimants in personal injuries cases who may not otherwise be successful in common law actions before the Courts, and for claimants in all cases whose legal costs would be out of all proportion to the small amount involved in the claim. Indeed, in the past few years there has been an obvious and real attempt by all concerned to seek satisfactory answers to such problems.

One notable example[1] is the establishment of a Motor Accident Board and a Motor Accident Tribunal, whereby persons whose injuries are caused by the use of a motor vehicle in Victoria, are able to receive compensation in accordance with a prescribed formula, whether or not they can prove that some other person's negligence caused or contributed to the accident resulting in their injuries. This is not in substitution for an injured person's right to pursue his common law remedy for damages; it is an alternative right. The benefits of the no fault liability scheme are not comparable to damages at common law but they are certain. The scheme is the first in Australia and it is expected similar schemes in other States will follow in due course.

Another example is the Crimes Compensation Tribunal which was created in 1972 and which has the power to award compensation where a person is injured or killed by a criminal act or omission. Again, in 1973 the first Ombudsman was appointed; in the same year, the Small Claims Tribunal was established. The latter tribunal enables persons without means to resort to and obtain justice in cases involving less than $500 and where lawyers are not permitted to appear. All of these show a willingness to change, if the case for a change can be made out.

However, the changes which the author adumbrates, are, in the main, of a fundamental nature. He appears to advocate the complete re-writing of the Rules with such changes in mind. It is debatable whether all the innovations which he wishes to see introduced are desirable, or, if they are, whether we are yet ready for such a wholesale reform of the present procedural system which has worked, by and large, well in the past, although at times under some strain. That is not to say that changes ought not to be introduced now, nor that amendments are not required to the existing Rules. One cannot reject out of hand any suggestion from as well informed a person as the learned author when he indicates that alternative procedures or techniques work well in other common law systems and are, in his view, superior to those with which we work. Such alternatives ought to be considered, an appraisal made of their probable effects in our system, and a decision reached, whether on balance they are desirable or sufficiently advantageous to warrant their adoption, either wholly or in part.

[1] See: No Fault Liability, a survey published in 1972 by the Victorian Bar Council and the Law Institute of Victoria.

This is not the place to discuss in detail the worth of the reforms suggested by the author in his Preface, but perhaps two should be mentioned, namely, the abolition of the jury system and the limiting of the scope of the legal professional privilege as a protection for the disclosure of documents on discovery.

In 1967 the first of these was considered in depth by the profession at a time when the State Attorney-General was considering limiting the type of case which could be heard by a Judge and Jury in the Court's civil jurisdiction. In the end, no change was implemented because of the persuasive arguments advanced by the profession for the retention of juries.[2] It is suggested that this retention is vindicated when one looks at the amounts of the verdicts given by juries in these days of rampant inflation. Such verdicts would probably not be matched if motor car actions were exclusively tried by a Judge sitting alone or dealt with by a special tribunal, as, unaided by current experience of verdicts of juries, both would tend to lag behind the true worth of the personal injury claim then before them. As Sir Owen Dixon, then Chief Justice of the High Court, said in *Ketley v. Roulstone*:[3]

> 'Members of the jury are summoned from a community necessarily alive to the progressive loss of the value of money, to the standards of living that prevail among ordinary men and women, to the cost of maintaining them, and to the avenues of employment open to the maimed.'

As to the limiting of the scope of legal professional privilege as a protection for the disclosure of documents on discovery, one does not know precisely what the author has in mind. It seems that he is referring to more than just a compulsory exchange of expert reports between parties, having specifically referred to such an exchange in his list of reforms. If this be so, then it should be borne in mind that changes in this area must be balanced by other and possibly weightier considerations; for at the very heart of any lawyer and client relationship is the safe knowledge of the client that communications passing between him and his lawyer in relation to the subject matter of the lawyer's retainer are secure from breach of confidence. Also covered by such confidence is documentary material brought into existence for the purpose of litigation. Destroy this confidence and you destroy one of the bases upon which the administration of justice is founded, with the result that the advantage of the reform may be more than offset by the consequent harm to the whole system.

With the establishment of the Law Reform Commission in 1973, and, following his retirement as a Judge of the Supreme Court of Victoria, with the appointment of Mr. Justice Smith to be the first Law Reform Commissioner, high hopes are now held for sensible reforms in both the criminal and civil jurisdictions of the Supreme Court. Indeed, the Law Reform Commissioner is charged with the duty of advising the State Attorney-General on the reform of the law of Victoria including, *inter alia*, simplification and modernization of the law having regard to the needs of the community and generally making the administration of justice more economical and efficient. It is understood that the Law Reform Commissioner will first look at certain aspects of the criminal jurisdiction and later will examine the civil jurisdiction.

In the meantime the Judges of the Supreme Court have introduced changes such as the Building Cases Rules referred to by the Chief Justice in his Foreword to this book. It is obvious that the Summons for Directions procedure used in the Building Cases List has worked remarkably well and one can anticipate similar procedures being introduced in other areas of litigation. In essence the Building Cases List is presided over by the one Judge who ensures that the Rules are complied with, sees that proper exchange of material takes place, defines and narrows the issues, and encourages the parties to talk settlement. This procedure does save

[2] See the booklet: Statement by the Victorian Bar Council concerning Congestion in the Civil Lists of the Supreme Court of Victoria, and published on 18 August 1967.

[3] (1961) 34 A.L.J.R. 495, 496; see also *Fairbairn v. Cummins* [1961] V.R. 105, 106.

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costs, even if the action proceeds to trial, as, with the issues narrowed, there probably is some saving in hearing time which more than counters the increased costs of attendances on the Summons for Directions which is often adjourned many times.

Williams Supreme Court Practice is a book which will remain in existence for many decades to come. The practising profession is greatly in the author's debt for satisfying an obvious and long felt want.

P. U. RENDIT*