of law have emerged from the joining of two or more accused in a single trial. The following five cases all raise points of interest.

(1) R. v. MITCHELL[1]

Separate verdicts

M and S were charged with eight others on counts of conspiracy to cheat and defraud two banking companies. The trial lasted 133 days and raised some of the problems associated with joinder of accused. In particular substantial portions of the evidence were admissible only against one of the accused. Thus the question arose whether the other accused were being prejudiced by evidence which was not admissible against them. The trial judge solved the problem by directing the jury on the relevant questions of law, summing up (a) generally the whole of the evidence, and then (b) specifically the evidence relating to M. The jury then retired and returned its verdict against M. The judge then summed up the evidence specially relating to three of the other accused and directed the jury to consider its verdict in relation to them. He then followed the same procedure in respect of S and another accused, and finally adopted a similar procedure in respect of the remaining two accused.

The trial judge relied upon the English Court of Criminal Appeal's judgment in *R. v. Newland*,[2] better known for its review of the law of conspiracy to effect a public mischief. In *Newland* there were six accused and the trial lasted six weeks. There was a mass of documents and the issues involved were of considerable complexity. The trial judge took the verdicts from the jury one by one, without waiting to take all the verdicts at the end of his summing-up. Approving of the procedure Lord Goddard C.J. giving the judgment of the Court said:

> To have thrown, so to speak, the whole of the case at the jury, leaving them to sort out afterwards the evidence against each appellant, would have been neither in the interests of the appellants themselves nor in the interests of justice.[3]

In *Mitchell* the decision upon M's guilt was essential before any verdict against any other accused could be sustained. Approving of the procedure Winnecke C.J. said:

> as the procedure was calculated to prevent any accused being prejudiced by a mass of evidence which was not applicable to

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1 [1971] V.R. 46.
2 [1954] 1 Q.B. 158.
3 Id. at 169.

> him, involved no departure from the principle that the case of each accused must be considered by the jury separately and on the evidence admissible in relation to him, or from any other principle of which we are aware, and as no misdirection on the part of the trial judge was alleged, it was well within the discretion of the judge to do as he did.[4]

The difference between the two cases is that in the English case the jury considered their verdicts against each of the six accused singly; in the Victorian case the jury considered their verdict against the ten accused in four groups. Neither the legislature nor the courts has ever prescribed the maximum number of persons that can be tried jointly. It is a matter for the discretion of the judge. The procedure adopted in the Victorian case seems eminently sensible. It now opens the question whether, in trials involving the joinder of say fifteen accused, a trial judge would be failing to exercise his discretion fairly if he did not direct the jury to take verdicts individually or in groups. Where the issues are complex it must surely become almost mandatory to adopt this procedure. The Supreme Court of Victoria made no suggestion to this effect. Nevertheless the procedure adopted in *Mitchell* deserves more than mere acceptance; it is a pattern which demands warm approval.

(2) R. v. ATTARD[5]

Making an unsworn statement and giving evidence

A and M were tried jointly for murder together with K who was charged as being an accessory before the fact to the murder. They were all convicted. An application for separate trials had been made and refused. Two points of law emerged from the judgment of the Court of Criminal Appeal of New South Wales. First, the fact that additional problems arise in a joint trial is, of itself, no reason for the grant of an order for separate trials. Secondly, if on a joint trial, an accused gives evidence, it is in for all purposes, that is, for or against his co-accused. Walsh J.A. also took the opportunity to draw attention to a practice which is apparently established that an accused person may make an unsworn statement from the dock and then give evidence from the witness box.[6] He said:

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4 [1971] V.R. 46, 53.
5 [1970] 1 N.S.W.R. 750.
6 Brown v. R., (1913) 17 C.L.R. 570.