> 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.

there is a practice under which an accused person may make a statement from the dock and may then swear in the witness-box that what he said in his statement was true. But I have not found any reported decision in which the practice has been discussed, or in which consideration has been given to the question whether it should be followed in a joint trial, or whether limitations should be imposed upon it, or dealing with the nature of the directions which should be given in a joint trial concerning evidence in that form. . . . If . . . there is a joint trial and a statement has included matter which implicates a co-defendant, but would be no evidence against the co-defendant if the maker of the statement did not go into the witness-box, it would seem to be generally desirable that, if he does then go into the witness-box, he should be required to give his evidence in the ordinary way, so that, as each question is asked, the ordinary rights of a party who may be affected by the evidence to object to it will be preserved.[7]

(3) R. v. WARBURTON[8]

Failure to direct jury properly

On a trial of four persons on a charge of arson evidence was given by each of the accused and witnesses were called on behalf of two of them. The evidence of these witnesses supported the evidence of the other two accused as well as the evidence of the two accused on whose behalf they were called. In addition the accounts given by some accused in the witness box tended to support the evidence given by other accused. Because the trial judge failed to draw the attention of the jury to the rule that the evidence of each accused and the evidence of the witnesses was admissible for or against each accused, the Court of Criminal Appeal of Queensland held that there had been a mistrial.

The theory is, of course, that once the trial judge has drawn the relevant rules of evidence to the attention of the jury his duty is done. Whether or not the jury do follow his guidance on points of evidence is not known because the deliberations of juries take place in camera. Nevertheless the case prompts the thought that an accused stands a better chance of finding fault with points of procedure and evidence in a joint trial than he does if he is tried singly. The possibilities of flaws are that much greater.

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7 [1970] 1 N.S.W.R. 750, 754-755.
8 [1970] Q.W.N. 15.