marks, is that England and Australia had separate moneys of account in 1895 and 1897. This conclusion makes good sense.

Thus their Lordships had to decide which money of account governed the transaction. In the High Court[4] the majority had held that all the circumstances showed that the obligations attached to the English register were identified with England and had an English money of account and those attached to the Australian register likewise had an Australian money of account.[5] The Privy Council decided that the High Court placed too much reliance upon the situation of the registers and the fact that the stock could be paid off in either country. Lord Cohen's judgment may be taken as a warning that the presumption that the money of account is the money of payment is of little value in any case and certainly useless where there is more than one place of payment as was the case here. It may be suggested that in spite of this high disapproval the presumption will continue to be used where there is only one place of payment, as it has been used in the past.

The Privy Council concluded that it was not possible from the nature of the scheme for there to be two different moneys of account. They held that the scheme was identified in the main with Queensland law and that the money of account was Queensland money. Therefore the stock-holders were paid the face value of their stock in terms of Queensland currency. Thus the unfortunate litigants discovered that three courts could apply the same rules of law and reach three different results. The main difference between the Privy Council and the majority in the High Court appears to have been the former's reluctance to accept the proposition that one transaction could have more than one money of account; that is, the difference lay in the interpretation of the facts.

H. STOREY

[4](1951) 84 C.L.R. 177.

[5]Macrossan C.J. in the Queensland Court ([1950]St. R. Qd. 264) reached the same conclusion but thought that the relevant time to see to which register each obligation was attached was the beginning of the scheme, whereas the majority in the High Court looked at the registers at the date of the winding up.

CRIMINAL PROCEDURE — RECALL OF CROWN WITNESS AFTER CLOSE OF CASE FOR DEFENCE

Two recent cases, one Australian and the other English, have shed much light on the law concerning the power of a judge at a criminal trial to permit the Crown to adduce further evidence after the case for the defence has closed.

In *Shaw v. The Queen*[1] the trial judge had permitted the Crown

[1](1952) C.L.R. 365.

to recall seven police witnesses after the case for the defence had closed. The High Court of Australia, unanimously reversing a majority decision of the Full Court of the Supreme Court of Victoria, held that the Crown should not in the circumstances have been permitted to do so.

The Appellant had been convicted of the murder of a prostitute with whom he had been living. The medical evidence showed that she had been throttled. A police officer testified that, before the cause of her death had been pronounced, Shaw had said: "Find the bastard who throttled Sylvia and don't stay around here."

Evidence was given by another police officer that the word used was "did" not "throttled". The accused admitted in evidence that he did use the word "throttled" and said that he did so because he had heard the police say that she had been strangled or throttled. After the case for the defence had closed the trial judge allowed the Crown Prosecutor to recall seven police witnesses and examine them as to the possibility of someone having said that the victim had been strangled or throttled and of the prisoner having heard of it.

In a joint judgment four justices[2] pointed out that the cumulative effect of the evidence of these seven witnesses was to bring into strong relief Shaw's admission that he had used the word "throttled", to give great emphasis to the point made by the Crown Prosecutor upon it as well as to the contradiction which was involved of the prisoner's evidence, and also to detract from any advantage the prisoner might obtain in placing before the jury by his personal evidence the answer he made to the charge as the final thing before the addresses of counsel and the charge to the jury by the judge.[3]

As to the legal principles applicable their Honours said: "It seems to us unsafe to adopt a rigid formula in view of the almost infinite variety of difficulties that may arise at a criminal trial. It is probably enough to say that the occasion must be very special or exceptional to warrant a departure from the principle that the prosecution must offer all its proofs during the progress of the Crown case and before the prisoner is called upon for his defence."[4] The Court unanimously agreed that this was not such an occasion.

All the justices disapproved of the dictum attributed to Tindall C.J. in the report of *R. v. Frost* in (1839) 4 State Trials (N.S.) 85, 386, as being too strict and rigid. Tindal C.J. is there reported as saying: "They must close their case before the defence begins; but if any matter arises *ex improviso*, which no human ingenuity can foresee,

[2]Dixon, McTiernan, Webb and Kitto JJ. [3](1952) 85 C.L.R. 365, 378.
[4](1952) 85 C.L.R. 365, 380.

on the part of a defendant in a civil suit, or a pensioner in a criminal case, there seems to me no reason why that matter which so arose *ex improviso* may not be answered by contrary evidence on the part of the Crown." The High Court refused to adopt this formula[5] which had been used in a number of English cases,[6] preferring the more flexible principle stated above.

In *R. v. Owen*[7] the Court of Criminal Appeal had to consider a case in which the trial judge had allowed a witness to be recalled after the summing-up and after the jury had been enclosed. The Court referred to the language of Tindal C.J. in *R. v. Frost* as reported in 9 C & P. 129, 159, and declined to adopt the rule there laid down, stating that the question must be one for the discretion of the judge, which should be applied with caution.[8]

The Court, however, decided that, although the trial judge had a discretion to admit evidence for the prosecution after the case for the defence had been closed to rebut matters raised for the first time by the defence, "It is quite another thing to say that, after the whole case is concluded and it remains only for the jury to return their verdict, it is right to allow further evidence to be given to clear up some matter which is troubling the jury."[9]

R. HATCH

[5]In 9 C. & P. 129, 159, Tindal C.J. is reported as saying: "But in any matter arises *ex improviso* which the Crown could not foresee, supposing it to be entirely new matter which they may be able to answer by contradictory evidence, they may give evidence in reply."
[6]e.g., *R. v. Harris* [1927] 2 K.B. 587; *R. v. Day* [1940] 1 All E.R. 402.
[7][1952] 2 Q.B. 362.
[8][1952] 2 Q.B. 362, 368.
[9][1952] 2 Q.B. 362, 368.

CONSTITUTIONAL LAW – VALIDITY OF BY-LAW – INTERPRETATION OF LOCAL GOVERNMENT ACT 1928 SEC. 197 (I) xxxiii

Leslie v. City of Essendon [1952] A.L.R. 450, a decision of the Full Court of the Supreme Court of Victoria, is the latest illustration in Victoria of the attitude of the Courts to municipal by-laws.

The modern approach is usually dated from *Kruse v. Johnson* [1898] 2 Q.B. 91, in which Lord Russell C.J. said that by-laws "ought to be supported if possible",[1] and emphasized that courts must not interfere unnecessarily with the discretion which Parliament vests in local government bodies.

In *Kruse v. Johnson* the court was considering "unreasonableness" as a ground for declaring a by-law invalid, and it held that this ground would be sufficient only in exceptional circumstances, as

[1] [1898] 2 Q.B. 91, 99.