

"This is a charge arising out of the recent prosecution and conviction of Chemis for murder. It appears that on the trial of the indictment against Chemis, Benjamin, one of the Wellington police detectives, was a witness. There are two charges on separate indictments, one of them is for saying that he found in a particular drawer in Chemis's house in the bedroom some pieces of paper, and that he took them out and gave them to another officer of the police. At any rate, he found pieces of paper in the drawer in Chemis's bedroom. It is that this is false to his knowledge, and that he was guilty of wilful and corrupt perjury in so saying. The fact that the paper was found there was most material to the charge against the prisoner, so as that there is no doubt about the indictment having been presented against Chemis; no doubt about Benjamin having given this evidence; no doubt about the materiality. The question for the grand jury is whether satisfactory evidence is brought to show that an indictment can be found against him for this so saying about the paper. Now, the Court is aware, and you will now be aware of it, although we cannot shut our eyes to what is told us in the newspapers of what takes place in the Courts. However, we know now that these charges were made before a Magistrate, and that after investigation and depositions taken at considerable length, that the Magistrate thought that there was no case to send to trial, and therefore did not commit Benjamin to take his trial. The law is that the person who is a prosecutor or a prosecutrix is bound over to prosecute if it is so desired. Such a course is taken here. A recognisance has been entered into by the wife of Chemis, who is bound over to prosecute before the Supreme Court. I say that although Chemis has been convicted of the highest and most serious crime known and committed, that it has not been considered that any recognised authority should take up a prosecution of Benjamin for this perjury; that is, no doubt, remarkable to begin with. Mrs. Chemis is prosecuting this charge against Benjamin for having made this alleged false statement. Now, Benjamin says that he found certain pieces of paper in a drawer; she has to prove the falsity of this statement. The only direct evidence I can see is that of a convict who now stands, certainly not under sentence of death, because the sentence has been commuted. It has been held by Lord Justice Lush that a person who is under sentence of death shall not be a competent witness at all, and held not to be a competent witness; but Chemis is now under sentence of imprisonment for life, and certainly before any tribunal which has to consider the trustworthiness of witnesses, it is quite clear that a person under sentence for life cannot give his testimony under any fear of punishment; and that is a matter which seems to me of consequence. The only other direct evidence I can see to be brought before you is the convict's wife's. With regard to her I need not say anything. Now, it sufficiently appears from the depositions, and even if it did not, I should consider it my duty to point out that, although it is no part of the duty of a grand jury to try a case, no part of the functions of a grand jury to hear the evidence of the defence, but that its function is to ascertain whether there is or whether the evidence appears to be credible, sufficient to justify that the person charged should take his trial before a common jury; but I am not prepared to say, in a case of this kind, that it would not be competent for you, if you should think, and if the circumstances that come out before you show, that the facts are as I am now about to point out, that Benjamin's evidence really was that in the presence of another detective (Campbell) he found this paper, and he forthwith handed it to the Inspector of Police; it seems to me perfectly competent for you to say in the public interest that we ought not to proceed to deal with this case without having the evidence of Campbell and Thomson. If you think, on the evidence that shall be brought before you, that it shall be right and proper, though it is certainly not for you under ordinary circumstances to try a case, yet it will be perfectly competent for you to say we cannot deal satisfactorily with this bill without hearing the evidence of those persons who were present there—Chemis and his wife, named in the indictment, and the names I have mentioned, Detective Campbell and Inspector Thomson. I think the same observation which I have made in that case will apply to the other indictment. It is this: that on the same occasion Benjamin did say, no doubt, that he found certain articles. No doubt the presence or absence of those articles in the house of the prisoner was of value. Whether there were percussion-caps in the drawer or whether there were not, whether there was a powder-flask in the drawer or rather whether there was not, and whether there was a wad-cutter or not; and, further, as to whether there were quail seen in the house by Benjamin. Benjamin says he did not see these things, whereas it is said that they were there, and that he did see them. On this same occasion Detective Campbell and Inspector Thomson were also there; the same observation applies. The only direct evidence of what took place on that occasion, and of what was in the drawer, could have been only the persons who were present on that occasion. As to whether these things were in the drawer the next day, or the next hour, or the day before, must be, in my opinion, quite immaterial. With these observations I ask you to retire to your room, and the bills will be presented to you."

The Chief Justice took a remarkable course in inviting the grand jury to go outside the list of witnesses on the back of the indictment and outside the evidence in support of the charge, and to call persons whose names are not on the back of the indictment, and whose evidence could only be "in exculpation of the accused." The Chief Justice went further. He not only suggested to the grand jury that they should obtain exculpatory evidence by calling persons not named on the back of the indictment, but he directed them not to call the evidence of witnesses whose names were on the back of the indictment, and whose testimony tended strongly to corroborate the evidence of the principal witnesses for the prosecution. He told the grand jury that corroborative evidence was irrelevant. In fact, the Chief Justice, while he by his charge proposed to curtail the undoubted rights of the grand jury to call all the witnesses named on the back of the indictment, and to consider all the evidence for the prosecution, indicated to them that they might go beyond the unwritten law to obtain what was unquestionably evidence for the accused.

*Prima facie*, the grand jury had no concern with any testimony but that which was regularly offered them with the bill of indictment, on the back of which the names of the witnesses were in-