

direction on his part, and that no evidence was improperly admitted or rejected.

The fact that the prisoners were tried together may in some respects have reflected unfavourably upon the prisoner Capelli, impossible as it often must be for the jury to avoid forming impressions unfavourable to both out of evidence applicable to the case of one of them alone: *Rex v. Martin*, 9 O. L. R. 218, 5 O. W. R. 317. This, however, was entirely for the jury under the direction of the Judge, and can only be considered elsewhere.

The further objection was raised on behalf of the accused that Dr. Robertson, whose name was on the back of the indictment, but who had not been sworn before the grand jury, was not called by the Crown and was not produced by the Crown or present in court so that he might be cross-examined or called by the accused. No authority was cited, and I have found none, to shew that this affects the validity or regularity of the proceedings.

Section 876 of the Code provides that the name of every witness examined or intended to be examined shall be indorsed on the bill of indictment, and that the foreman of the grand jury shall write his initials against the name of each witness sworn and examined upon the bill; and by sec. 877 the name of every witness intended to be examined on any bill must be submitted to the grand jury by the prosecuting officer, and that no others shall be examined before such grand jury, unless upon the written order of the presiding Judge.

In Archbold's *Crim. Pldg.*, 23rd ed. (1905), p. 414, it is said: "Although in strictness it is not necessary for the prosecutor to call every witness whose name is on the back of the indictment, it has been usual to do so that the defendant may cross-examine them. If the counsel will not call them, the Judge in his discretion may. . . . However, the prosecutor is not bound to call them all, though he ought, it has been said, to have them in Court that they may be called for the defence if the prisoner chooses." Roscoe's *Crim. Ev.*, 12th ed., p. 119, is to the same effect. The case of *Regina v. Edwards*, 3 Cox C. C. 82, is cited, in which it is laid down that it is in general a matter entirely within the discretion of counsel whether all the witnesses at the back of the bill should be called on behalf of the Crown or not, and,