

trate, the defendant has an opportunity of ascertaining who are the witnesses who depose against him, and what is the nature of either evidence. If, then, he be admitted to bail, what is to prevent *him*—if he be committed to custody, what is to prevent his friends from tampering with the witnesses? It would be useless, or at least highly dangerous to attempt to do so if they were only to be examined at the trial; because, on that occasion, the evidence being given in a public Court would be publicly known, and the depositions being returned to that Court, any material variance in the testimony would be immediately detected, and would render the witnesses liable to an indictment for perjury. But the case is far different before the grand jury. There the jurors being sworn to secrecy, and each witness being examined alone, who is to discover any falsehood that one or more of them may be bribed to utter? Yet, if any unexplained inconsistency appear in the narrative, the grand jury can scarcely fail to doubt its truth, and the consequence is that the bill is ignored. The prosecutor has no means of avoiding this result. He knows that some of his witnesses have betrayed him; perhaps he has reason to suspect the individual who has done so; but he has no remedy. An indictment for perjury must specify the words spoken, and how can he discover what these words were? The law, indeed, may say that a false witness before a grand jury is subject to prosecution; but the law does not add how a conviction can be obtained; and we believe that, with one solitary exception, no trace can be discovered of such a proceeding.

“Again, if the witnesses are of such a character as to preclude the hope of their being successfully suborned, the accused may still escape, providing he can only bribe, (and this is no difficult matter,) some person to go to the prosecutor, and pretend that he is acquainted with facts corroborative of the charge. These facts being narrated with the semblance of zeal, the confidence of the prosecutor is gained; the defendant’s friend, with the witnesses previously examined, is sent before the grand jury, and there, by an artful statement, throws such doubt on the matter, that no bill is found. It is true, that both these last mentioned abuses might be partially avoided, either by making the grand jury perform their functions as in former days they frequently did, in open court, or by directing that the attorney for the crown should in all cases