

aside a verdict, the grounds of the application are distinctly stated, and before it is made absolute, it is fully argued in public. In this case the application was made in private, the parties consulted were not sworn, nor subjected to cross-examination, nor any opportunity given to the prosecuting officer to rebut their evidence, either by argument or the production of other persons equally competent to form an opinion on the subject. If there must be an appeal in criminal cases (I do not mean a new trial, for that is out of the question), it should be heard before a competent tribunal, in a formal and legal manner, and the proceedings conducted in as public a way as the original trial. There are cases in which the prerogative of the Crown to pardon, may be exercised with great propriety, but in general, it ought to be confined to those instances in which the law, under which the trial takes place, is involved in doubt; or where additional evidence has been discovered, which, had it been known at the trial, might have produced an acquittal; or where the verdict was not in accordance with the charge of the Court, or was influenced by party, personal, or religious feeling. But where both the judge and the jury who tried the cause, arrived at the same conclusion, and the former has subsequently, on mature reflection, seen no cause to change his opinion, and more especially when the latter, as in this instance, have declared that their decision was formed from the evidence, even before they heard the charge, which confirmed, but did not influence, their verdict, I can see nothing to justify the Secretary in interfering to prevent the course of justice, especially as he is an unprofessional man, and *was not present at the trial*.

‘Mr. Justice Story, one of the most eminent lawyers among us, was an intimate friend of mine, and he told me that a judge’s notes or a short-hand writer’s report of the trial of a case, although verbally accurate, could not be depended on in a review of the case for a new trial, on the ground of the verdict being against the evidence, because it was necessary to *see and hear* a