render competent any party to any suit, action, or proceeding individually named in the record, &c. Then sec. 2 enacts, that on the trial of any issue joined, or of any matter or question, or on an inquiry arising in any suit, action, or other proceeding in any court of justice, &c., the parties thereto and the persons in whose behalf any such suit, action, or other proceeding may be brought or defended, shall except as hereinafter excepted, be compelled and compellable to give evidence. And then sec. 3 provides that nothing herein contained shall render any person who in any criminal proceeding is charged with the commission of any indictable offence or any offence punishable on summary conviction, competent or compellable to give evidence for or against himself or herself, or shall render any person compellable to answer any question tending to criminate himself or herself, or shall in any criminal proceeding render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband. Now, under the 1st section the prisoner Curtis was a competent witness for the prisoner Payne, and there is nothing in the 3rd section which prevents him from being a witness. Since that Act in *Reg.* v. *Deeley*, 11 Cox, C. C. 607, where three prisoners were jointly indicted for robbery with violence, and were given in charge to the jury, Mellor, J., allowed two of the prisoners to be called as witnesses for the other one. And in a case at the Shropshire Assizes, Pigott, B., also allowed one prisoner to be called as a witness for another on a joint indictment after they were given in charge to the jury. The same course has also been followed by Lush, J. The reason for the incompetency was the ground of interest, and not of being a party to the suit or proceeding: 1 Phil. on Ev. 68, 8th edit. In *Worrall* v. *Jones*, 7 Bing, 395, Tindal, C. J., says that a party to the record would be an admissible witness if he were not interested. [Martin, B.—Suppose two persons jointly indicted for murder, what legal interest has one in the conviction or acquittal of the other? Was not the rule that parties to the proceeding were excluded? Bramwell, B.—If it was on the ground of interest, that was an objection for the benefit of the party interested which might be waived and the party called, but did anyone ever hear of such a thing being done?] It may be that the rule is qualified to the extent that a party to the immediate inquiry is not admissible. [Blackburn, J.—If a prisoner is competent to give evidence for a fellow prisoner, on cross-examination he may be forced to give evidence against himself.] He would be privileged from answering questions tending to criminate himself. In Taylor on Evidence, 1096, it is said that the 14 & 15 Vict., c. 99, which was intended to remove a doubt, has instead created one by the words "Except as hereinafter is excepted" in section 2. [Bramwell, B.—My brother, Cleasby, B., suggests that that exception points to section 4. Is not the rule of construction, that where the Crown is not referred to in Acts of Parliament they do not apply to the Crown, for the Crown is the prosecutor? Cockburn, C. J.—The words "other proceeding" in the statute must be construed as *ejusdem generis* with the words preceding "suit, action," and would mean other civil proceeding. The exception in the proviso was introduced (probably in committee) *ex abundanti cautelâ*, and was not intended to enlarge the enactment.] The words of section 2 are, "any suit, action, or other proceeding in any court of justice, or before any person," &c.; and then, section 3 goes beyond civil proceedings. The learned counsel then referred to 1 Russell on Crimes, 625. In *Reg.* v. *Smith*, 1 Moo., C. C., 289, the wife of one prisoner was held inadmissible to prove an *alibi* for another prisoner with whom her husband was jointly indicted, on the ground that by shaking the evidence of a witness who had identified both prisoners, she would weaken the case against her husband. But in *Reg.* v. *Moore*, 1 Cox, C. C. 59, Maule, J., said, of course a wife could not be examined for her husband, but for another prisoner jointly indicted with him for a burglary she might, and admitted her as a witness. And Wightman, J., so held in *Reg.* v. *Bartlett*, 1 Cox, C. C. 105. The modern legislation encourages the calling of witnesses for prisoners; and to facilitate this the 30 & 31 Vict., c. 35, s. 3, provides for their being bound over, and section 5 for the allowance of their expenses. It would be a dangerous rule to exclude co-prisoners as witnesses, as evidence might be shut out by vindictive persons procuring their committal as accomplices. [Cockburn, C. J.—This danger may be obviated by asking permission to have the prisoners tried separately; and then there would be no objection to calling one prisoner as a witness for another with whom he was jointly indicted.] It ought to be a matter of right for a prisoner to be enabled to call a joint co-prisoner as a witness. The giving of the prisoners in charge ought not to raise any difficulty, for the issue is joined when the prisoners plead: *Reg.* v. *Winsor*, 35 L. J. 121, M. C.; 10 Cox, C. C. 270. [Blackburn, J. — The material thing is when the prisoners are given in charge to a jury who are to say whether they are guilty or not guilty. They are the persons who are to determine the issue as well as to hear the evidence. If one prisoner is admissible for another, he must also be admissible against him. The competency of one prisoner as a witness for another is one thing—the privilege not to answer questions tending to criminate himself is another. The refusal to answer only goes to the credit of the witness. Taylor on Evidence, 627 (note), and *Reg.* v. *Jackson* and *Cracknell*, 6 Cox C. C. 525, were then referred to.

Streeten (*Jelf* with him) for the prosecution.—The witness was properly rejected. In *Hawksworth* v. *Showler*, 12 M. & W. 47, Lord Abinger says: "Nothing is clearer than this, that a person cannot be a witness who is a party to the record, and affected by the determination of the issue, and that the wife of such a person is equally incapable of being a witness." And Alderson, B., said, "The rule is, that a party upon the record against whom the jury have to pronounce a verdict, cannot be a witness before that verdict is pronounced." The modern statutes have not altered that principle. The 14 and 15 Vict., c. 99, only applies to civil proceedings; and sect. 3 was introduced, lest it should