from the day the Court of Revision confirmed the roll.

On June 13th the appeal was heard before His Honour, D. J. Macarow, Deputy Judge.

W. H. R. Allison, appeared for appellants.

Low, Q.C., *contra.*

The Clerk being sworn, admitted the service of the notice in this and all other cases above referred to on the 9th day of last May. He did not give the usual notices to the parties appealing, because he believed that they were not in time as all the cases were decided upon by the Court of Revision more than three days before the 6th of May. The minutes of the Court of Revision—as produced to the Court—shewed that the Court sat on the 25th, 26th and 29th days of last April and the 6th of last May, and the decision given in this and the other cases named were not disturbed or reconsidered before the Court closed its labors.

Low, Q. C., argued that the notices, in order to be properly served, should have been in the clerk's possession within three days after the day each case was decided, and not the day when the Court closed.

Allison, contra. the three days counted from the day the Court confirmed the Roll.

No authorities were cited.

His Honor said that as the points raised were of serious importance, he would adjourn the Court to consider the matter, and to ascertain if any decision had been given by other County Court Judges on the points raised in this case.

3rd July.—Macarow, D. J.—I have ascertained from the Judge of the County Court of the County of Simcoe (Judge Gowan), that it is his opinion that the three days should be counted from the day the decision is actually given in each case, and not from the day the Court of Revision closed.

I am of opinion that the three days must be counted from the time the decision is given. I am glad to find this view confirmed by the opinion of Judge Gowan—for whom I have a very high respect—and in this view I have no alternative but to administer the law as I find it.

My decision is, that the time for the notice counts from the time of the particular decision, and not from the day of the close of the Court of Revision, as contended for by *Mr. Allison* and I dismiss this and the other cases without costs.

ENGLISH REPORTS.

CROWN CASES RESERVED.

Reg. v. Payne.

Evidence—Joint charge—Incompetency of fellow prisoners as witnesses for one another.

After several prisoners jointly indicted are given in charge to the jury, one, while in such charge, cannot be called as a witness for another.

The 14 & 15 Vict., ch. 99, does not apply to criminal proceedings.

[C. C. R., Jan. 27, 1872. 26 L. T., N. S., 42.]

Case reserved by Keating, J., for the opinion of the Court for the Consideration of Crown Cases Reserved, and directed by that Court to be argued before all the Judges.

John Payne, George Owen, Isaac Owen, and Joseph Curtis, were indicted before me at the Winter Assizes for the County of Worcester, 1871, for that they to the number of three or more, armed with offensive weapons by night, did enter in, and were on land belonging to Earl Dudley, for the purpose of taking or destroying game.

It appeared that at one o'clock on the morning of the 4th October, 1871, the keepers of Earl Dudley discovered a number of poachers upon the Earl's lands taking game. They were armed with stones, bludgeons, &c , and advanced upon the keepers, with whom they had a desperate struggle. Ultimately the keepers were forced to retire, one keeper being dangerously and another severely wounded.

The prisoner Payne and the two Owens were first apprehended, and on being brought before the magistrates each set up an *alibi* by way of defence, and called witnesses in support. Amongst the witnesses called by Payne was the prisoner Curtis, not then in custody, and he proved having been with Payne at the time in question at a place so distant from the scene of the affray, as to render it impossible he could have been one of the poachers. Curtis with the other witnesses for the prisoners, were bound over by the magistrates, under 30 & 31 Vict., c. 35; but having been afterwards identified as one of the party of poachers he was committed, and indicted with the other three prisoners.

On the trial all four prisoners were sworn to, by various witnesses, as having formed part of the gang of poachers on the night in question. The defence by each was, as before the magistrate, an *alibi*, and the counsel for Payne proposed to call the prisoner Curtis to prove what he had deposed to before the justices. I held that he was incompetent, and could not be called. All the prisoners were convicted and sentence passed.

I desire the opinion of the Court of Crown Cases Reserved, first, whether a prisoner jointly indicted with another can, after they have been given in charge to the jury, be called as a witness for the other without having been either acquitted or convicted, or a *nolle prosequi* entered: *Winsor* v. *The Queen*, 35 L. J. 161, M. C.; 14 L. T. Rep. N. S. 195; *Reg.* v. *Deeley*, 11 Cox C. C. 607. Secondly, whether upon the present form of indictment, and under the circumstances of the case, the prisoner Curtis was competent, and ought to have been called as a witness for the prisoner Payne: (See Russell on Crimes, by Greaves, 626–7, 4th edit.; Taylor on Evidence, 1178–9.)

If the prisoner Curtis was a competent witness, and might have been called on behalf of Payne in the present case, then the conviction is to be quashed or the prisoner to be discharged, otherwise the judgment is to stand.

H. S. Keating.

T. S. Pritchard (*E. H. Selfe* with him) for the prisoner.—The question mainly depends on the construction of the 14 & 15 Vict., c. 99, s. 3. Sec. 1 of that Act repeals so much of the 6 and 7 Vic., c. 85, as provides that that Act shall not