self. 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 sect. 2 are, any "suit action or other proceeding in any court of justice, or before any person," &c.; and then, sect. 3 goes beyond civil proceedings. The learned counsel then referred to 1 Rus. on Crimes 625. In *Reg.* v. *Smith* 1 Mood. C. C. 289, the wife of one prisoner was held inadmissable 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 sect. 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. 276. [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 & 15 Vict. c. 99, only applies to civil proceedings; and sect. 3 was introduced, lest it should otherwise be thought to extend to criminal proceedings. If Curtis had been allowed to be called as a witness, every word that he said must have been in his own favour as well as in favour of Payne. If a co-prisoner is admissible at all, his fellow-prisoner or the prosecutor may compel him to be a witness. [LUSH, J.—If he was allowed to be called, he must be cross-examined, and if he declines to answer on the ground that his answers would tend to criminate him, that might have the effect of leading to his conviction. COCKBURN, C. J.—Or he might be cross-examined as to his past life, and the result might seriously injure his case. BRETT, J.—Is it not a fundamental rule of the law of England that when a prisoner is on his trial, he shall not be examined or cross-examined for or against himself?]

Pritchard in reply, cited *Reg.* v. *Stewart* 1 Cox. C. C. 174.

COCKBURN, C. J.—We are all of opinion that the witness was properly rejected at the trial; and we all agree that the proviso in the 14 & 15 Vict. c. 99, on which the prisoners' counsel relied, was only intended to prevent the statute being supposed to contradict or alter the rule of law as it has existed from the earliest times, according to which rule a party on his trial could not be examined or cross-examined as a witness for or against himself. It is impossible that the Legislature could have intended by such a proviso to do so. And the old law of England in that respect still remains unaltered.

Conviction affirmed.

In *Bowles* v. *Lambert*, 53 Ill. 237, it was held that the following writing was not a promissory note:

"I owe the estate of Zenas Warden one hundred ninety 15-100 dollars. May 13, 1863.

"JOSEPH BOWLES."

It appeared that Bowles (now dead) in his lifetime was in the habit of giving to those who had accounts with him similar papers as statements, merely, of their accounes, and not as promissory notes; and, inasmuch as there was no person named in the instrument in suit as payee, the court inferred that it was intended only as a statement of the balance of his account with the estate of Warden.—*Albany Law Journal.*