

QUEEN vs. SEPTEMBER.

Ordinance No. 72, sec. 10.—Freedom from prosecution of principal or accessory giving evidence.

A prisoner, after he has been produced as a witness for the Crown, and has submitted to be sworn and fully answered all lawful questions put to him, is protected, by section 10, of Ordinance No. 72, from punishment for the offence, either as principal or as accessory.

1878.
August 16.
Queen vs. Sep-
tember.

DE VILLIERS, C.J.: Among the cases of the week is one of the *Queen vs. Adam September and Coos Japtha*, who were charged before the Magistrate of Pequetberg with theft of a sheep. September pleaded guilty and Japtha not guilty. After some witnesses had been examined, the prisoner September was called for the Crown and gave evidence implicating Japtha, who was then convicted of receiving stolen property knowing it to have been stolen, and sentenced to five months' imprisonment. September was at the same time sentenced to receive thirty-six lashes. Now if September had been sentenced before he gave his evidence, all inducement to give false evidence would have been removed. But the 10th section of Ordinance No. 72, of 1830, enacts that where any person who has been an accomplice, either as principal or accessory in the commission of any crime or offence, shall be produced as a witness by and on the part of the prosecution, shall submit to be sworn as a witness, and shall fully answer to the satisfaction of the Court all such lawful questions as shall be put to him while under examination, such person shall thereby be absolutely freed and discharged from all liability to prosecution for any such crime or offence. This prisoner before sentence was called as a witness for the Crown, and we must assume he gave his evidence satisfactorily seeing that the Magistrate convicted the other prisoner upon it, and subject to what the Attorney-General may urge, by the section I have just cited he is absolutely freed.

Upington, A.G., admitted that he could not support the conviction under the circumstances.

Conviction of Adam September quashed accordingly.