



ANNO SEPTIMO ET OCTAVO

VICTORIÆ REGINÆ.

No. 8.---1844.

*By His Excellency GEORGE GREY Esquire Governor and Commander-in-Chief of Her Majesty's Province of South Australia and its Dependencies and Vice Admiral of the same by and with the advice and consent of the Legislative Council.*

*AN ORDINANCE to allow the Aboriginal Inhabitants of South Australia and the parts adjacent, to give Information and Evidence without the sanction of an Oath.*

*Repealed by  
A. 3. 1848.*

**W**HEREAS many of the requisites and provisions of the law with respect to the giving of evidence upon oath in civil and criminal proceedings have frequently been found to exclude the testimony of the Aboriginal Inhabitants of this Province, who are barbarous and uncivilized people, destitute of the knowledge of God and of any fixed belief in religion, or in a future state of rewards and punishments. And whereas there are also many tribes of such barbarous and uncivilized people in the countries adjacent hereto on the Continent of Australia. And it is apprehended that much failure of justice may ensue, and many serious offences and crimes committed with the privity of such people only may pass unpunished, if some means be not devised whereby such evils may be prevented. And whereas doubts which have existed as to the validity of laws made by Colonial Legislatures for the admission of the evidence of any such persons have been removed by an Act of the Imperial Parliament entitled "An Act to authorize

6th Vict., cap. 23.

authorize the Legislatures of certain of her Majesty's Colonies to pass laws for the admission in certain cases of unsworn testimony in Civil and Criminal Proceedings."

Any Justice of the Peace may receive the information of an aboriginal native, or of a half caste native on his affirmation to tell the truth, without administering the usual form of oath.

BE IT THEREFORE ENACTED by his Excellency the Governor of South Australia with the advice and consent of the Legislative Council thereof, That from and after the passing of this Ordinance upon any information being made before any Justice of the Peace of this Province by any Aboriginal Native or Aboriginal Half-caste Native of this Province or of any of the countries adjacent hereto on the Continent of Australia being one of such uncivilized persons as are hereinbefore described of any matter whereof the said Justice hath jurisdiction and authority to enquire, it shall and may be lawful for such Justice, to receive and take the information of such person upon his affirmation or declaration to tell the truth, the whole truth, and nothing but the truth, without administering the usual form of oath, and to reduce the substance of such information into writing, in all cases when it shall be necessary so to do, and thereupon to take any other such further proceedings as may be usual and proper in the case of an information made by any other of her Majesty's subjects.

Evidence of aborigines or half castes to be received on such affirmation without oath.

II. And be it Enacted, That in any civil action, or upon any Inquest before a Coroner, or upon any enquiry into any matter of complaint, or upon the trial of any offence, whether committed by one of such persons as are hereinbefore described or by any other person, it shall and may be lawful for any Court, or Judge, or for any Coroner or any Justice or Justices of the Peace to receive the evidence of any of such Aboriginal or Half-caste Natives as aforesaid, being such uncivilized persons as are hereinbefore described, without administering the usual form of oath, but upon their affirmation or declaration to tell the truth, the whole truth, and nothing but the truth: Provided always that in the case of any proceeding in the nature of a preliminary enquiry, the substance of the evidence or information of any of such persons as aforesaid shall be reduced to writing, and signed by a mark by the person giving the same, and verified by the signature of the person acting as interpreter, if any, and of the Justice or Justices of the Peace before whom such information or such evidence shall have been given.

In preliminary proceedings to be reduced to writing and verified by Magistrate.

III. Provided always and be it Enacted, That the Court, Coroner, or Justice, shall, before taking any such information or examination, caution every such Aboriginal or Half-caste Native, that he will be liable to incur punishment if he do not tell the truth.

IV. And be it Enacted, That the written declaration or examination

made, taken and verified in manner aforesaid of any such Aboriginal Native or Half-caste Native as aforesaid, being one of such uncivilized persons as are hereinbefore described, may be lawfully read and received as evidence upon the trial of any cause, civil or criminal in this Province, when, under the like circumstances, the written affidavit, examination, or deposition of any person, might be lawfully read and received as evidence.

Their written examinations to be received under the like circumstances as any other.

V. And be it Enacted, That the degree of weight and credibility to be attached to any such evidence whether oral or written shall be in the discretion of the Justice or Justices, or of the Court or Judge respectively, or of the Jury under the direction of the Court or Judge, according to the tribunal before which such evidence shall be offered, as being evidence given without the sanction of an oath: Provided that no person, whether an aboriginal or other, shall be convicted of any offence by any Justice or Jury upon the sole testimony of any such uncivilized persons: Provided also that it shall not be necessary to such conviction that any particular fact affirmed by such uncivilized person shall be corroborated by other evidence.

Credibility of the evidence left to the Justice or Court, or Jury under direction of the Judge.

VI. And be it Enacted, That if any such Aboriginal or Half-caste Native as aforesaid, making such affirmation or declaration as aforesaid in place of an oath, shall be convicted of having wilfully falsely and corruptly affirmed or declared, any matter or thing which, if the same had been made upon oath in the usual form, would have amounted to wilful and corrupt perjury he shall incur the same penalties and forfeitures, as by the laws and statutes of England are enacted against persons convicted of wilful and corrupt perjury.

Wilful falsehood in any such evidence to be liable to the punishment of perjury.

VII. Provided always that nothing herein contained shall be deemed to authorize any Judge, Coroner or Justice of the Peace to take or admit the unsworn testimony of any person who shall appear upon examination by such Court Coroner or Justice to believe in a God, a future state of reward and punishment and the obligation of an oath.

Not to apply to persons believing in the obligation of an oath.

G. GREY,  
Governor of South Australia.

Passed in the Legislative Council, this  
Twelfth day of August, 1844.

W. L. O'HALLORAN,  
Clerk of Council.