



1848.

No. 3.

ORDINANCE enacted by the Governor of South Australia, with the advice and consent of the Legislative Council thereof.

To Facilitate the Admission of the Unsworn Testimony of the Aboriginal Inhabitants of South Australia and the parts adjacent.

[21st July, 1848.]

*Amended by
No. 4. 1849*

WHEREAS the Law of Evidence whereby, in the administration of justice, no testimony is permitted to be received, unless given under the sanction of an oath, necessarily excludes the testimony of many persons Aboriginal Natives of this Province, and of the Countries adjacent thereto on the Continent of Australia, who are altogether uncivilized and are destitute of the knowledge of a God, and of any fixed religious belief: AND WHEREAS in order to prevent the failure of justice, and that crimes and offences committed with the privity of such uncivilized Persons might not go unpunished, Two several Ordinances have been passed, the one on the twelfth day of August

Preamble.

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1844. No. 8.

1846. No. 5.

Repeal of Ordinances,
No. 8, 1844, and No. 5,
1846.

one thousand eight hundred and forty-four, intituled "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;" and the other passed on the twenty-third day of August one thousand eight hundred and forty-six, being an Ordinance passed for the purpose of amending the first-mentioned Ordinance: AND WHEREAS it is deemed necessary to amend the said Ordinances, and to reduce the same into one Ordinance: BE IT THEREFORE ENACTED by THE GOVERNOR OF SOUTH AUSTRALIA, with the advice and consent of THE LEGISLATIVE COUNCIL thereof—THAT both the said Ordinances shall continue in force until this present Ordinance shall commence and take effect, and shall then be repealed.

Such uncivilized persons as are hereinbefore described may give information or evidence without oath.

The Court, Judge, &c., is to cause it to be explained to the witness that he is to tell all he knows about the matter in question.

The testimony of such uncivilized person being reduced to writing, is to be received as evidence in all cases where the affidavit, &c., of any person might be lawfully received.

Information of such uncivilized person may be received without oath.

In cases of preliminary enquiry the complaint, information, or testimony

II.—AND BE IT ENACTED, that in all proceedings in the administration of justice whether of a civil or criminal nature, wherein the testimony of any such uncivilized person as hereinbefore described, may be required, it shall be lawful for the Court, Judge, or Coroner, or Justice, or Justices of the Peace having jurisdiction in the matter, to which the testimony relates, to receive such testimony without administering any form of oath, and without any formality, except that such Court, Judge, or Coroner, or Justice, or Justices, as the case may be, shall before receiving such testimony, cause it to be explained to such uncivilized person, that he is required to tell what he knows about the matter, to which his testimony relates.

III.—AND BE IT ENACTED, that the testimony of any such uncivilized person being reduced to writing, and being verified as hereinafter mentioned, may be lawfully received as evidence upon any trial, civil or criminal in this Province, when under the like circumstances the written affidavit, examination, or deposition upon oath of any person, might be lawfully read or received as evidence.

IV.—AND BE IT ENACTED, that when any such uncivilized person as aforesaid, shall be willing to make any complaint or information, before any Justice of the Peace of any matter, whereof such Justice hath jurisdiction to enquire, it shall be lawful for him to take the complaint or information of such uncivilized person as aforesaid, without administering any form of oath, and without other formality, and such complaint or information being in all cases reduced to writing, and verified by the signature of the Justice before whom the same is made, such further acts and proceedings may be done and had thereupon, as may be lawfully done and had, upon complaints or informations made upon oath in ordinary cases.

V.—AND BE IT ENACTED, that in every case of proceeding of the nature of a preliminary enquiry, the testimony of such uncivilized person

person as aforesaid shall be reduced into writing by, or in the presence of the Coroner, Justice of the Peace, or other Magistrate, before whom the same may be taken, and shall be verified by the signature of such Coroner, Justice, or Magistrate, and by his certificate, that the writing contains a true statement of such testimony, which certificate shall be according to the form in the Schedule to this Ordinance annexed.

of such uncivilized person to be reduced into writing in the presence of the Justice.

And to be verified by his signature and certificate.

VI.—AND BE IT ENACTED, that the effect of any such unsworn testimony shall be according to the weight and credibility, which in the opinion of the Justice or Justices, or of the Court or Judge, or of the Jury, under the direction of the Court or Judge, (as the tribunal may be before which such evidence shall be offered) ought to be attached thereto, as evidence given without the sanction of an oath: PROVIDED ALWAYS, that no person whether Aboriginal Native, or other shall be convicted of any offence in respect whereof he may be adjudged to suffer death or transportation upon the sole unsworn testimony of any such uncivilized person or persons: PROVIDED NEVERTHELESS that it shall not be necessary to a conviction in any case, that the testimony of such uncivilized person or persons shall be corroborated, as to any particular fact by other evidence relating to the same fact.

Effect of unsworn testimony to be in the discretion of the Justice, Judge, or Jury, &c.

The Commission referred to by

Proviso.

These provisions are repealed by Act 1847.

Proviso.

VII.—AND WHEREAS some such uncivilized person as aforesaid, may occasionally be found, having sufficient knowledge of the English language to be able to explain therein, what is said by one of such uncivilized persons in his native language: BE IT THEREFORE ENACTED, that in all cases, when according to the provisions of this Ordinance the testimony of such uncivilized persons as aforesaid may be lawfully received in the administration of justice, without the sanction of an oath, it shall be in like manner lawful for the Judge, Justice, or Coroner before whom such testimony is offered, to receive the same by means of the interpretation of any such uncivilized person as aforesaid, without administering to him any oath duly to interpret such testimony: PROVIDED that such Judge, Justice, or Coroner shall be satisfied of the ability of the person offered as Interpreter duly to interpret the same.

Unsworn Interpreter may be used.

Proviso.

VIII.—AND BE IT ENACTED, that if any such uncivilized person as aforesaid, shall in giving his information or testimony in manner aforesaid, wilfully make any false statement, which if made upon oath, would subject him to the penalties of perjury, he shall be deemed guilty of a misdemeanor, and be liable to be imprisoned with or without hard labour for any term, not exceeding Two years, and further to be once, twice, or thrice publicly or privately whipped, if the Court, before

Punishment for any wilfully false statement.

before whom he shall be tried shall so think fit, in addition to such imprisonment.

The common testimony of persons who appear to believe in a God, a future state of rewards and punishment and to understand the obligation of an oath not to be admitted.

IX.—PROVIDED ALWAYS, that nothing herein contained, shall be deemed to authorise any Judge, Coroner, or Justice of the Peace, to take or admit the unsworn testimony of any person, who shall appear upon examination to believe in a God, or a future state of reward and punishment, and to understand the obligation of an oath.

Construction.

X.—AND BE IT ENACTED, that the term uncivilized persons shall be deemed to include, not only Aboriginal Natives of this Province, and the Countries adjacent thereto, but uncivilized Natives thereof, who are half-caste or of mixed breed.

Commencement of Act.

XI.—AND BE IT ENACTED, that this Ordinance shall commence and take effect from the passing thereof.

FREDK. H. ROBE,
Lieutenant-Governor.

Passed the Legislative Council this Twenty-first day of July, One thousand eight hundred and forty-eight.

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

SCHEDULE.

South Australia } The examination of (*state the name of witness*),
to Wit. } an Aboriginal and Uncivilized Native of South
 Australia taken before me, A. B., one of Her Majesty's Justices of
 the Peace for the said Province, the day of
 who in the presence and hearing of (*state the name of the accused*
person), charged before me, the said Justice, for (*state the offence*)
 saith (*set forth the examination.*)

I certify that the above writing contains a true statement of the
 testimony of the above-named (*name of Native witness*) on his ex-
 amination before me this day.

Given under my hand this day of

A. B.

NOTE.—If the examination was taken by means of an Interpreter,
 the words as interpreted by (*name of Interpreter*) may be introduced
 with the certificate. If taken before a Coroner, the examination and
 certificate will be varied accordingly.