WESTERN AUSTRALIA.

ANNO QUARTO

VICTORIÆ REGINÆ.

No. 8.

An Act to allow the Aboriginal Natives of Western Australia to give information and evidence in Criminal cases, and to enable Magistrates to award summary punishment, for certain offences.

WHEREAS many of the forms, requisites, and provisions of the English law have been found to be wholly inapplicable to the Aboriginal Inhabitants of the Territory of Western Australia, inasmuch as there is strong reason to believe, that these people are entirely ignorant of the existence of any future state of rewards and punishments, and do not acknowledge any form or mode of adjuration as binding upon them, in consequence of which much failure of justice ensues, and many serious offences and crimes, which have been committed with their privity only, are unavoidably suffered to pass unpunished; And whereas it is expedient to advise some means whereby such offences may be punished with greater facility and certainty than are at present attainable:—Be it therefore enacted, by His Excellency the Governor of Western Australia, by and with the advice and consent of the Legislative Council thereof, that from and after the passing of this Act, Preamble.

Any Justice of the Peace may receive the information of an Aboriginal Native on his affirmation, without administering the usual form of oath.

it shall and may be lawful for any Justice of the Peace of the said Colony, upon any complaint being made before him by any of the Aboriginal race of this Territory, to receive and take the Information of the said Individual 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, if it should appear necessary so to do, and thereupon to issue his summons, or his warrant, as the nature of the case may require, or to take any other such proceedings as may be usual and proper in the case of an information made by any of Her Majesty's natural born subjects.

On the inquiry or trial the Evidence of any of the Aborigines may be received on affirmation without administering the usual form of oath.

II. AND be it further enacted, that upon any enquiry into any matter of complaint, or upon the trial of any offence, whether committed by one of the Aborigines or by any other person, it shall and may be lawful for any Court, or for any Justice or Justices of the Peace, to receive the evidence of any of the Aborigines without administering the usual form of oath, such Aboriginal Native having first made an 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 such Aboriginal Native shall be reduced to writing, and signed by a mark by such Native, and verified by the signatnre of one or more of the Justices of the Peace before whom such Information or such Evidence shall have been given.

In any preliminary stage of proceeding such information or evidence is to be reduced to writing, signed by a mark and verified by the Justice.

III. AND whereas it is impossible to compel or secure the attendance of any of the Aboriginal race at any appointed time and place, by the usual and proper course of proceeding according to the English law;—Be it further enacted, that if at the appointed time of the enquiry or trial, the Aboriginal Native who gave his or her Information or Evidence in any preliminary stage of the proceedings shall not appear when called upon, then in such case, such Information or Evidence so taken as aforesaid, and so reduced to writing and so signed and verified as aforesaid, may be read and received as Evidence, in any future stage of the proceedings relative to the same transaction, without the necessity of bringing forward the same Individual, to repeat his testimony orally: provided always nevertheless, that the degree of credibility to be attached to any such Information or Evidence, whether in the preliminary, or in the final stage of the proceedings, and whether oral or written, shall be entirely left to the decision of the Justice or Justices, or of the Court and jury respectively, according to the Tribunal before which such Information or Evidence shall have been offered, but no such Information or Evidence shall in any case be considered as conclusive unless the same shall be supported by strong corroborative circumstances.

If, at the appointed time of enquiry or, hearing, the individual who gave the information does not appear, then such information or evidence so written, and signed, and verified, may be read in evidence.

The degree of credibility to be attached to such information or evidence shall be entirely left to the decision of the Justices or Court and Jury, and is not to be considered conclusive unless supported by strong corroborative circumstances.

Any person making such affirmation falsely, is to be punishable as in case of perjury.

IV. AND be it further enacted, that if any Aboriginal Native making snch affirmation or declaration, as aforesaid, 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 or corrupt perjury, he or she 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.

Justices may try certain offences and award sentence of imprisonment not exceeding one year.

V. AND be it further enacted, that it shall be lawful for any two or more Justices of the Peace, not interested in the subject matter of the complaint, to enquire into and try all offences, except as hereinafter mentioned, with which any of the Aboriginal race shall be charged, and if the person so charged shall be proved to have committed such offence, then it shall be lawful for such Justices as aforesaid to sentence the offenders to be imprisoned, or to be imprisoned and kept to hard labour in the common gaol or place of confinement appointed for such persons, for any time not exceeding one year, according to the nature and magnitude of the offence: Provided always, and be it enacted, that if the offence with which such Aboriginal offender shall be charged shall be considered by such Justices to be of so serious nature as to deserve or require a greater degree of punishment, then, in such case, such offender shall be committed to take his trial at the usual Sessions of the Peace for the said colony.

But if the offence is of such a nature as to deserve a greater degree of punishment, then the case should be referred for trial at the Quarter Sessions.

If the offence shall be of a trivial nature, or if it be thought more advisable, the Justices may sentence to whipping in the case of male ofienders with not more than 24 stripes.

VI. AND be it furtner enacted, that if the offence which any of the Aborigines shall be proved to have committed, shall be of a trivial nature, or if it shall appear to such Justices that it would be more satisfactory to the friends of the offender, and likely to operate beneficially as a general example in snch case, it shall be lawful for the said Justices to substitute the punishment of whipping, with any number of stripes not exceeding Twenty-four, provided that the punishment of whipping shall only be inflicted in the case of male offenders.

In all cases of summary punishment the Justices are to report the case to the Governor add Executive Council.

VII. AND be it further enacted, that in all cases in which any punishment shall be summarily inflicted by such Justices under this Act, they are hereby required to make a report of the circumstances of the case to the Colonial Secretary, for the information of the Governor and the Executive Council.

VIII. AND be it further enacted, that this Act shall be and continue in force for two years from the date of its passing the Legislative Council.

JOHN HUTT,
GOVERNOR AND COMMANDER-IN-CHIEF

Passed the Legislative Council
the 2nd day of July, 1840.

WALKINSHAW COWAN,
Clerk of the Council.