

No. 13, 1954.]

ACT

To provide for the abolition of the Native High Court, the transfer of the jurisdiction thereof to the Supreme Court, and for other incidental matters.

(English text signed by the Governor-General.)
(Assented to 31st March, 1954.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

1. In this Act, unless the context indicates otherwise— **Definitions.**
 - (i) "Native High Court" means the Natal Native High Court constituted under section *seven* of the Courts Act, 1898 (Act No. 49 of 1898 (Natal));
 - (ii) "Supreme Court" means the provincial or any local division of the Supreme Court of South Africa having jurisdiction in respect of the whole or any part of the Province of Natal. (i)

2. The Native High Court shall be and the same is hereby abolished. **Abolition of Native High Court.**

3. The jurisdiction which immediately prior to the commencement of this Act was vested in, or capable of being exercised by the Native High Court shall be and the same is hereby transferred to and vested in the Supreme Court. **Transfer of jurisdiction of Native High Court to Supreme Court.**

4. All criminal cases pending in the Native High Court at the date of commencement of this Act shall stand removed to the Supreme Court, which shall have jurisdiction to hear and determine the same: Provided that any case partly heard at that date may be further heard and determined as if this Act had not been passed. **Pending cases to be heard by Supreme Court.**

5. Any criminal case which, but for this Act, might have been heard by the Native High Court, may be heard and determined by the Supreme Court, or in the discretion of the Attorney-General may be sent to and determined by the court of a magistrate or regional magistrate which has by law jurisdiction to hear such a case. **Hearing of criminal cases formerly heard by Native High Court.**

6. (1) Nothing in this Act contained shall be construed as prejudicing any right existing immediately prior to the commencement of this Act to prosecute any pending appeal or to bring any appeal from any judgment or order of the Native High Court. Any such appeal may be prosecuted or brought as if this Act had not been passed. **Saving of existing rights of appeal.**

(2) If by reason of this Act application for leave to appeal in terms of sub-section (1) of section *three hundred and sixty-nine* of the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917), or for a special entry to be made on the record in terms of section *three hundred and seventy* of the said Act or for any question of law to be reserved in terms of section *three hundred and seventy-two* of the said Act, cannot be made to the Native High Court or any judge thereof, such application may be made to a judge of the Supreme Court.]

(3) For the purpose of carrying into effect any order or direction given by the court of appeal in terms of section *three hundred and seventy-four* of the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917), in the case of an appeal in terms of sub-section (1), the case shall be deemed to have been tried by the Natal Provincial Division of the Supreme Court.

7. Within one month after the commencement of this Act or within such further period as may be ordered by the Judge President of the Supreme Court, the person holding the office **Transfer of records of Native High Court to Supreme Court.**

of Registrar of the Native High Court at such commencement shall cause all records belonging to the Native High Court, together with all registers relating thereto, to be transferred to the office of the Registrar of the Supreme Court, Pietermaritzburg, who shall thereafter have the charge of such records and registers in like manner as of the records and registers of the Supreme Court; and all other books, documents, papers and chattels in the possession of the Native High Court or of any person attached to the Native High Court, shall be transferred in like manner to the Supreme Court and shall be dealt with by such person as the Judge President may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

8. Section *two* of the Appellate Division Further Jurisdiction Act, 1911 (Act No. 1 of 1911), is hereby amended by the deletion of the words "or of the Native High Court of Natal," Amendment of section 2 of Act 1 of 1911.

9. Section *nine* of the Administration of Justice Act, 1912 (Act No. 27 of 1912), is hereby amended by the deletion in paragraph (b) of sub-section (1) of the words "the Natal Native High Court or". Amendment of section 9 of Act 27 of 1912.

10. Section *twenty-one* of the Administration of Justice Act, 1912 (Act No. 27 of 1912), is hereby amended by the deletion of the words "to the Natal Native High Court or". Amendment of section 21 of Act 27 of 1912.

11. Section *six* of the Criminal Procedure and Evidence Act, 1917 (Act No. 31 of 1917) (hereinafter referred to as the principal Act), is hereby amended by the deletion in sub-section (1) of the last sentence thereof. Amendment of section 6 of Act 31 of 1917.

12. Section *one hundred and sixty-five* of the principal Act is hereby amended by the deletion of the words "save as is specially provided in Act No. 49 of 1898, of Natal, or any amendment thereof, or any other law conferring jurisdiction on the Native High Court of Natal, or". Amendment of section 165 of Act 31 of 1917.

13. Section *three hundred and sixty-three* of the principal Act is hereby amended by the deletion in sub-section (5) of all the words after "award" where it occurs for the first time. Amendment of section 363 of Act 31 of 1917, as amended by section 68 of Act 46 of 1935 and section 106 of Act 31 of 1937.

14. The following section is hereby substituted for section *three hundred and sixty-eight* of the principal Act: Substitution of new section for section 368 of Act 31 of 1917, as substituted by section 6 of Act 37 of 1948.

"Court of appeal from Superior Court criminal judgments. 368. (1) In respect of appeals and questions of law reserved in connection with criminal cases dealt with by a provincial or local division of the Supreme Court, or a special criminal court, the court of appeal shall be the Appellate Division of the Supreme Court.

(2) An appeal shall lie to the court of appeal only as provided in sections *three hundred and sixty-nine* to *three hundred and seventy-two* inclusive and not as of right."

15. Section *three hundred and sixty-nine* of the principal Act is hereby amended— Amendment of section 369 of Act 31 of 1917, as substituted by section 7 of Act 37 of 1948.

- (a) by the deletion in sub-section (1) of paragraph (b);
- (b) by the deletion in sub-section (4) of the words "or, in the case of an appeal where the Natal Provincial Division is the court of appeal to the Judge President" and the words "or to the registrar of the Native High Court (as the case may be)"; and
- (c) by the deletion in sub-section (5) of the words "or the Judge President (as the case may be)" and the words "or Judge President".

16. Section *three hundred and seventy* of the principal Act is hereby amended— Amendment of section 370 of Act 31 of 1917, as substituted by section 8 of Act 37 of 1948.

- (a) by the deletion of sub-section (3); and
- (b) by the deletion in sub-section (6) of the words "or in the case where the Natal Provincial Division is the Court of appeal to the Judge President,".

17. (1) Section *one* of the Natal Native High Court Act, 1921 (Act No. 9 of 1921), is hereby amended by the substitution for the word "sixty-five" of the word "seventy". Amendment of section 1 of Act 9 of 1921.
- (2) Sub-section (1) shall be deemed to have come into operation on the first day of January, 1954.
18. Section *two* of the Administration of Justice (Further Amendment) Act, 1927 (Act No. 11 of 1927), is hereby amended by the deletion of paragraph (d). Amendment of section 2 of Act 11 of 1927.
19. Section *seven* of the General Law Amendment Act, 1949 (Act No. 54 of 1949), is hereby amended by the deletion in paragraph (ii) of sub-section (1) of all the words after "Courts". Amendment of section 7 of Act 54 of 1949.
20. Section *twenty-three* of the General Law Amendment Act, 1952 (Act No. 32 of 1952), is hereby amended by the deletion of the words "or of the deputy bailiff of the Native High Court of Natal", the words "or acting deputy bailiff" and the words "or the bailiff of the said Native High Court, as the case may be,". Amendment of section 23 of Act 32 of 1952.
21. The Laws specified in the Schedule hereto are hereby repealed to the extent set out in the fourth column of that Schedule: Provided that such repeal shall not be construed as in any way affecting the right which any person who, immediately prior to the commencement of this Act was a judge of the Native High Court, may have to receive a pension or other benefit under any pensions law applicable. Repeal of laws, and saving of pension rights.
22. Nothing contained in this Act shall be construed in any way to limit the powers of the Supreme Court as conferred by any other law. Saving of powers of Supreme Court.
23. (1) If any person who immediately before the commencement of this Act was a judge of the Native High Court, is immediately after such commencement appointed a judge of any division of the Supreme Court of South Africa, the period of service of such person as a judge of the Native High Court shall for the purposes of a pension under the provision of the Judges' Salaries and Pensions Act, 1912, or for the purposes of absence on leave, be deemed to be service as a judge of the Supreme Court. Service as judge of Native High Court of person appointed as judge of Supreme Court deemed to be service with Supreme Court for pension or leave purpose.
- (2) If any person who, on his retirement, is entitled in terms of section *five* of the Financial Adjustments Act, 1929 (Act No. 27 of 1929), to receive such pension or other retiring benefits as he may be entitled to under any law referred to in that section, is appointed in accordance with the provisions of sub-section (1), as a judge of any division of the Supreme Court of South Africa, such right to a pension or other retiring benefit and any right to a leave gratuity to which any such person may, on retirement, be entitled, shall lapse: Provided that the amounts paid by and in respect of any such person to the Union Public Service Pension Fund established under section *three* of the Government Service Pensions Act, 1936 (Act No. 32 of 1936), shall be paid out of that Fund to the Consolidated Revenue Fund, together with interest at the rate of four per cent. per annum on twice the amounts paid in respect of that person, calculated according to the dates upon which those amounts became payable: Provided further that any such person shall be entitled to the surrender value of his contributions to the Union Widows' Pension Fund established under section *seventy-eight* of the Public Service Act, 1923 (Act No. 27 of 1923). Pension or other benefit payable to person appointed as judge to lapse.
24. This Act shall be called the Native High Court Abolition Act, 1954, and shall come into operation on a date to be notified by the Governor-General by proclamation in the *Gazette*, save as to section *seventeen* which shall come into operation on the date of promulgation of this Act. Short title and date of commencement.

Schedule.
(Section 21.)

Province or Union.	No. and Year of Law.	Long or Short Title or Subject of Law.	Extent of Repeal.
Natal.	Law No. 49 of 1898.	The Courts Act, 1898.	The whole.
Natal.	Law No. 47 of 1901.	An Act to amend the Courts Act, 1898.	So much as is unrepealed.
Natal.	Law No. 30 of 1910.	An Act to amend the Courts Act, 1898.	The whole.
Union.	Act No. 9 of 1921.	Natal Native High Court Act, 1921.	So much as is unrepealed.
Union.	Act No. 39 of 1926.	The Criminal and Magistrates' Courts Procedure Amendment Act, 1926.	Section 44.
Union.	Act No. 27 of 1929.	Financial Adjustments Act, 1929.	Section 5.
Union.	Act No. 46 of 1935.	General Law Amendment Act, 1935.	Section 77.
Union.	Act No. 57 of 1946.	Finance Act, 1946.	Section 21.
Union.	Act No. 36 of 1948.	Judges' Salaries and Pensions Amendment Act, 1948.	Section 4.
Union.	Act No. 54 of 1949.	General Law Amendment Act, 1949.	Section 6 (c).
Union.	Act No. 46 of 1950.	Natal Native High Court Amendment Act, 1950.	The whole.
Union.	Act No. 50 of 1952.	Finance Act, 1952.	Section 9.
Union.	Act No. 45 of 1953.	Finance Act, 1953.	Section 13.