

THE NATIVE ADMINISTRATION ACT NO. OF 1927.

AS AMENDED

By

- Act No.9 of 1929
- Act No.9 of 1939
- Act No.42 of 1942
- Act No.21 of 1943
- Act No.36 of 1944
- Act No.56 of 1949
- Act No.54 of 1952
- Act No.13 of 1955.

To provide for the better control and management of Native Affairs.

Be it enacted by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:-

CHAPTER I.
Administration.

1. The Governor-General shall be the Supreme chief of all Natives in the Province of Natal, Transvaal and Orange Free State, and shall in any part of the said Province be vested with all such rights, immunities, powers and authorities in respect of all Natives as are or may be from time to time vested in him in respect of Natives in the Province of Natal.
2. (1) The Minister may, subject to the law governing the public service, appoint for any area an officer, to be styled chief Native Commissioner, who shall exercise such powers and perform such duties as the Minister may from time to time prescribe, and so many officers, to be styled Assistant Chief Native Commissioner, as he may deem necessary to assist the Chief Native Commissioner in carrying out the functions assigned to him.
(2) Subject to the provisions of the law governing the public service and of sub-section (3), the Minister may appoint for any area in which a large number of Natives reside a Native Commissioner and 80 many additional Native Commissioners and Assistant Native Commissioners as he may deem necessary, who shall perform such duties as may be prescribed by any law or assigned to them by the Minister.
(3) The Minister shall not appoint any person under sub-section (1) or (2) unless he is, at the time of his appointment, a member of the public service, in terms of section one of the Public Service Act, 1923 (Act No.27 of 1923) and unless -
 - (a) he has passed the civil service lower law examination or an examination determined by the Public Service Commission to be equivalent thereto for the purposes of this section; or
 - (b) he held, at the commencement of this Act, the post of Native Commissioner or Native Commissioner; or
 - (c) he was continuously employed in the Department of Native Affairs or in the Department of Justice as from the thirty-first day of May, 1910, to the date of his appointment as aforesaid.
- (4) Every Native Commissioner appointed for any area in the Transvaal Province shall, within that area, have the power to solemnize marriages under Law No.3 of 1897 of Transvaal.
- (5) Subject to the provisions of the law governing the public service, the the Minister, or if delegated thereto by the Minister, the Secretary for Native Affairs or the Under Secretary for Native Affairs may appoint for any area for which a Native Commissioner has been appointed, a location superintendent to assist the Native Commissioner to control or supervise any location in that area, and so many persons as may be necessary to assist such a superintendent, and may prescribe the duties of any superintendent or other person so appointed.
- (6) The Minister, or if delegated thereto by the Minister, the Secretary for Native Affairs or the Under Secretary for Native Affairs, may when circumstances require appoint any person to act temporarily as a Chief Native Commissioner or Native Commissioner, or location superintendent, in the place of or in addition to the ordinary incumbent of the post, even though the person so appointed is not qualified for permanent appointment to the post in question, by reason of the provisions of sub-section (3).

- (7) The Governor-General may recognise or appoint any person as a chief of a native tribe and may make regulations prescribing the duties, powers privileges and conditions of service of chiefs so recognized or appointed, and of headmen, acting chiefs and acting headmen appointed under sub-section (8). The Governor-General may depose any chief so recognized or appointed.
- (7) bis when recognised or appointing a person as chief of a native tribe or at any time thereafter the Governor-General may, notwithstanding anything in this Act or in any other law contained, after a public enquiry by such persons having a knowledge of the language, customs and laws of the native tribe concerned, as he may appoint for the purpose, make an order awarding to, or imposing upon, the person so recognized or appointed as chief such of the property, rights or obligations of the previous chief, whether deceased or deposed by the previous chief by virtue of his office and or he may deem just.
- (7) ter Any person affected by an order made in terms of sub-section (7) bis may, within one year from the date thereof, petition the Governor-General for the amplification, variation or interpretation of the provisions of the order, and the Governor-General may make such order thereon as he may deem fit.
- (8) The Minister or, if delegated thereto by the Minister, the Secretary for Native Affairs, the Under Secretary for Native Affairs or the chief Native Commissioner for the area concerned may appoint any person as headman over a location or as headman of the Natives in any area and may appoint any person as to act temporarily as a chief or headman in the place of or in addition to the ordinary incumbent of the post, and may depose any headman so appointed.
- (9) Any person obstructing any officer, chief or headman in this section mentioned in the lawful execution of his duties or disobeying any lawful order of or wilfully insulting such officer, chief or headman while acting in the course of his duty or wilfully obstructing the proceedings of any meeting lawfully convened by such officer, chief or headman in connection with his duty shall be guilty of an offence; and in addition, any person, who wilfully insults any such officer, chief or headman while presiding over a meeting convened by him in connection with his duty or wilfully obstructs the proceedings of such meeting may be removed therefrom and, if necessary, detained in custody by order of such officer, chief or headman, until the conclusion of such meeting.

CHAPTER II.

Tribal Organization and Control.

3. (1) Subject to the provisions of this section, a Native people or tribe shall not be responsible for the personal obligations of its chief; nor shall a tribe on the ground occupied by a tribe be bound in any way whatever by any contract entered into or any liability incurred by a chief unless it has been approved by the Minister after having been adopted by a majority of the adult male members of the tribe present at a public meeting convened for the purpose of considering such contract or liability.
- (2) The written certificate of a Native Commissioner that the contract or liability referred to therein has been adopted in terms of sub-section (1) shall be conclusive evidence of that fact.
4. No legal proceedings in regard to the ownership or acquisition of land by a native tribe shall be instituted or maintained against the chief of such tribe, or both, by an individual or members of the tribe concerned unless such member or members produce a written certificate issued by the Secretary for Native Affairs, stating that the Governor-General has approved of the institution of such proceedings.

5. (1) The Governor-General may -

- (a) define the boundaries of the area of any tribe or of a location and may from time to time alter the same and may divide any existing tribe into two or more parts or amalgamate tribes or parts of tribes into one tribe or constitute a new tribe, as necessity or the good government of the natives may in his opinion require;
- (b) Whenever he deems it expedient in the general public interest, order that, subject to such conditions as he may determine, any tribe, portion of a tribe or native shall withdraw from any place to any other place or to any district or province within the Union and shall not at any time thereafter or during a period specified in the order return to the place from which the withdrawal is to be made or proceed to any place, district or province other than the place, district or province indicated in the order, except with the written permission of the Secretary for Native Affairs: Provided that if a tribe refuses or neglects to withdraw as aforesaid no such order shall be given or, having been given, shall be of any force and effect until a resolution approving of the withdrawal has been adopted both Houses of Parliament: Provided further that any such order made in respect of a portion of a tribe or a native which is still in force after the expiry of a period of twelve months from the Tables of both Houses of Parliament within fourteen days after the expiry of such period if Parliament is then in ordinary session, or if Parliament is not then in ordinary session, within fourteen days after the commencement of its next ensuing ordinary session, and shall, if both Houses of Parliament pass resolutions disapproving thereof during the session in which it is so laid upon the said Tables, cease to have effect on the day on which the last of such resolutions is passed.
- (2) (a) Any native who neglects or refuses to comply with any order issued under paragraph (b) of sub-section (1) or with any condition thereof, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or to imprisonment, with or without the option of a fine, for a period not exceeding six months.
- (b) Any native commissioner or magistrate may, upon such conviction, take all such steps as may be necessary to ensure compliance with the order or with any condition thereof and may, by warrant under his hand, direct that any policeman or policemen shall carry out the withdrawal or ensure compliance with the order, if necessary by force.
- (c) Any person who obstructs or hinders any native commissioner, magistrate or policeman, or any person assisting such native Commissioner, magistrate or policeman in the exercise of his powers under this section, shall be guilty of an offence and liable on conviction to a fine not exceeding fifty pounds or, in default of payment, to imprisonment for a period not exceeding six months.
- (3) Notwithstanding the provisions of sub-section (2) the Governor-General may order that any native who neglects or refuses to comply with any order issued under paragraph (b) of sub-section (1) or with any condition thereof shall be summarily arrested and detained and as soon as possible removed in terms of the order.
- (4) No interdict or other legal process shall issue for the stay of any order or direction issued under paragraph (b) of sub-section (1), paragraph of sub-section (2) or sub-section (3) nor shall any such order or direction be suspended by reason of any appeal against a conviction under sub-section (2).

- (5) (a) The powers vested in the Governor-General under this section shall be in addition to the powers vested in him under section one; and
- (b) the provisions of this section shall be of full force and effect in relation to any native who has been exempted, in terms of section thirty-one of this Act or any other law, from any laws specially affecting natives.

CHAPTER III.

Land Registration and Tenure.

6. (1) All the powers and duties hitherto vested in or imposed upon registers of deeds under the law relating to the registration of deeds, in so far as may relate to immovable property owned by natives and situate within any such area included in the schedule to the Natives Land Act, 1913 (Act No. 27 of 1913) or any amendment thereof, or within any such area in any location, or may be defined by the Governor-General by proclamation, devolve upon the Chief Native Commissioner of the area within which such immovable property is situate and all documents relating to any such immovable property shall thereupon be transferred from any existing deeds registry to the custody of the Chief Native Commissioner concerned: Provided that any registrar of deeds may instead of so transferring any document filed in his registry furnish the Chief Native Commissioner concerned with a copy thereof certified under his hand, which copy shall thereafter be as valid for all purposes as the original document.
- (2) The Governor-General may make all such regulations as he may deem expedient for giving effect to the provisions of sub-section (1), and may in such regulations prescribe the fees to be charged by Chief Native Commissioners in the exercise of any function under that sub-section.
7. (1) The Governor-General may revoke any grant of land in a location made on individual tenure to a native upon quitrent conditions, and issue a substituted deed of grant in favour of the holder or of such person as may be adjudged to be entitled to be registered as the holder in conformity with the procedure prescribed in section eight: Provided that in the case of the areas comprising the Fingo and Hottentot Village situate within the urban area of Grahamstown in the Province of the Cape of Good Hope, this sub-section shall be construed as if the words "upon quitrent conditions" were omitted therefrom.
- (2) Such substituted grant shall be registered in the appropriate registry, and shall be in such form and subject to such conditions as the Governor-General may by proclamation prescribe: Provided that the conditions of any such substituted grant as may be issued in respect of land in the area comprising the said Fingo and Hottentot Village shall be as set forth in the Second Schedule to this Act.
8. (1) The Governor-General may at any time appoint a commissioner for the purpose of investigating and determining the rights of occupation or ownership of persons other than Europeans or Asiatics claiming to own land, in respect of which a deed of grant or title has at any time been issued -
- (a) which is situate in an area referred to in section six; or
- (b) which is situate in any location; or
- (c) to which any proclamation under section thirty-four relates; or
- (d) to which the provisions of this section may be applied by the Governor-General by Proclamation in the Gazette.
- (2) The commissioner shall be the magistrate of the district in which the land in question is situated, or some other official selected for the purpose.

- (3) The commissioner shall have all the powers conferred by law on magistrate's courts for the summoning of witnesses, their examination on oath, and to compel the production of documents.
- (4) Witnesses called by the commissioner shall be subject to all duties and liabilities, and shall be entitled to all the privileges of witnesses called to give evidence in a magistrate's court.
- (5) When necessary, a surveyor may be appointed to assist the commissioner in an advisory capacity in his investigations.
- (6) It shall be the duty of the commissioner after giving such notice to interested parties as shall be prescribed by regulations under this Act to enquire into the ownership of all lands in respect of which he has been appointed, and to submit to the Minister a certified list of all lots found to be actually occupied by registered holders.
- (7) When land is found by the commissioner to be in the occupation of a native who is not the registered holder, he shall enquire into and determine who is the person entitled to be registered as the holder of such land, and a certificate by the commissioner in the form prescribed by regulations made under sub-section (10) that the person named therein is the person entitled to be registered as the holder of the land specified shall, without it being necessary to pass transfer to any intermediate owner or occupier, be sufficient authority for the registration in the appropriate registry of such person as his lawful owner, free of any transfer duty on payment of a fee of one pound: Provided that in any case the occupier is not the person ultimately named in the certificate as the person entitled to be registered as the holder and if the commissioner is satisfied that such occupier has bona fide effected improvements on the property the commissioner assess the value of the said improvements. Until the amount so assessed shall be paid to or secured for the benefit of the occupier the registration of the person named in the certificate as the lawful holder shall not be made.
- (8) Should the commissioner be unable to discover the owner of any such land he shall report accordingly to the Minister who shall take such steps in regard to such land as may be prescribed by regulations framed under this Act.
- (9) Any person deeming himself to be aggrieved by any decision of the commissioner may, in the manner and within the period prescribed by regulations, appeal in writing to a board of three persons who shall be appointed by the Governor-General from time to time as may be required, with all the powers of a commissioner under this Chapter and whose decision shall be final.
- (10) The Governor-General may make regulations -
- (a) prescribing the manner and form in which any transfer to any person other than a European or Asiatic of land -
 - (i) in respect of which a substituted deed of grant has been issued under section seven; or
 - (ii) in respect of which any person has under sub-section (7) been registered as the owner, which is effected after the date of issue of such deed of grant or of such registration, or the case may be, shall be registered;
 - (b) providing for exemption from the payment of fees of office in connection with the registration of any such transfer; and
 - (c) generally, as to all matters which he considers it necessary or expedient to prescribe in order that the purposes of this section may be achieved.

- (11) No regulation made under paragraph (a) of sub-section (10) shall be invalid merely by reason of any inconsistency with the provisions of the Deeds Registration Act 1937 (Act No.47 of 1937).
- (12) No transfer duty shall be payable on the transfer to any person other than a European or Asiatic of any land situate in any area comprising the Fingo or the Hottentot village referred to in section thirty-four, in respect of which any person has under sub-section (7) been registered as the owner, which is effected after the date of such registration.

CHAPTER IV.

Judicial Organization and Procedure.

9. The Governor General may, by proclamation in the Gazette, confer criminal jurisdiction upon a native commissioner in respect of an offence, subject to the jurisdiction of a magistrates court, committed by a native within his area of jurisdiction, and thereupon such native commissioner shall, for all purposes of the magistrates' Courts Act, 1917 (Act No.32 of 1917), or any amendment thereof and of the Criminal Procedure and Evidence Act, 1917 (Act No.31 of 1917), or any amendment thereof, be deemed to be a magistrate's court or a magistrate in connection with any proceedings relating to any offence committed by a native. The jurisdiction so conferred upon a native commissioner shall be concurrent with the jurisdiction of the magistrate's court and magistrate concerned under the said Acts.
10. (1) The Governor-General may, by proclamation in the Gazette, constitute courts of native commissioners for the hearing of all civil ~~cause~~ and ~~other~~ matters between native and native only:

Provided that a native commissioner's court shall have no jurisdiction in matters in which -

- (a) the status of a person in respect of mental capacity is sought to be affected;
 - (b) is sought a decree of perpetual silence;
 - (c) namptissement is sought;
 - (d) the validity or interpretation of a will or other testamentary document is in question, unless the value of the property which will be affected by the provisions of such will or document does not exceed three hundred pounds, or unless all persons whose rights may be affected by the decision of the court submit to its jurisdiction or have had an opportunity to object to its jurisdiction and have failed to do so; or
 - (e) a decree of nullity, divorce or separation in respect of a marriage is sought.
- (2) Every such court shall be a court of law over which a native commissioner shall preside. Such a court shall ordinarily hold its sittings at a place within the area of its jurisdiction (as defined under sub-section (3) where the office of a native commissioner has been established, but it may also hold sittings at any other place which the Governor-General may have indicated for the purpose in the said area.
- (3) The Governor-General shall define the area or areas in which any such court shall have jurisdiction and he may include in any area the area or any part of the area in which any other court of native Commissioner also has jurisdiction, and he may from time to time extend or reduce or alter the area of jurisdiction of any such court and he may abolish its jurisdiction over any area: Provided that a court of native commissioner shall not have jurisdiction in any case unless -
- (a) the defendant or respondent in that case resides or carries business or is employed in the area of jurisdiction of that court; or

(d) section two to and including seven of the Deserted Wives and Children Protection Ordinance, 1903 (Ordinance No.44 of 1903) of Transvaal. are in force; those provisions shall be applicable in connection with a native who is the husband of a wife or father of a child who is also a native as if, in those provisions, the reference to a "resident magistrate" or a "magistrate" were a reference to a native commissioner as defined in section thirty-five of this Act, and the reference to a "district" or "division" were a reference to an area in which a court of native commissioner has jurisdiction, and the reference to a "court" were a reference to the competent court of native commissioner.

- (2) If a husband or father against whom a native commissioner has made an order under a provision mentioned in paragraph (a), (b), (c) or (d) to the magistrate in whose district the husband or father concerned is, and the said magistrate shall deal therewith as if the order had been certified and transmitted to him by a magistrate in terms of the provision in question.
- (3) An order made by a native commissioner by virtue of the preceding provisions of this section shall be enforceable and shall be subject to an appeal to the competent native appeal court as a judgment of the court of the said native commissioner.
- (4) In the preceding provisions of this section and in applying, in terms of sub-section (1) any provision mentioned in that sub-section the words "husband" and "wife" shall include a man and a woman, respectively, who are associated with one another in a customary union, and the expression "married woman" shall include such a wife.

11. (1) Notwithstanding the provisions of any other law, it shall be in the discretion of the courts of native commissioners in all suits or proceedings between natives involving questions of customs followed by natives, to decide such question according to the native law applying to such customs except in so far as it shall have been repealed or modified: Provided that such native law shall not be opposed to the principles of public policy or natural justice: Provided further that it shall not be lawful for any court to declare that the custom of lobola or bogadi or other similar custom is repugnant to such principles..
- (2) In any suit or proceedings between natives who do not belong to the same tribe, the court shall not, in the absence of any agreement between them with regard to the particular system of native law to be applied in such suit or proceedings, apply any system of native law other than that which is in operation at the place where the defendant or respondent resides or carries on business or is employed, or if two or more different systems are in operation at that place, not being a tribal area, the court shall not apply any such system unless it is the law of the tribe (if any), to which the defendant or respondent belongs.
- (3) The capacity of a native to enter any transaction or to enforce or defend rights in any court of law shall, subject to any statutory provision affecting any such capacity of a native, be determined as if he were a European : Provided that -
 - (a) if the existence or extent of any right held or alleged to be held by a native or any obligation resting or alleged to be resting upon a native depends upon or is governed by any native law (whether codified or uncoded) the capacity of the native concerned in relation to any matter affecting that right or obligation shall be determined according to the said native law;

- (b) a native woman who is a partner in a customary union and who is living with her husband, shall be deemed to be a minor and her husband shall be deemed to be her guardian.

12. (1) The Minister may -

- (a) authorize any native chief or headman recognized or appointed under sub-section (7) or (8) of section two to hear and determine civil claims arising out of native law and custom brought before him by Natives against Natives resident within his area of jurisdiction.
- (b) at the request of any chief upon whom jurisdiction has been conferred in terms of paragraph (a) authorize a deputy of such chief to hear and determine civil claims arising out of native law and custom brought before him by natives against natives resident within such chief's area of jurisdiction: Provided that a native chief headman or chief's deputy shall not under this section or any other law have power to determine any question of nullity, divorce or separation arising out of a marriage.
- (2) The minister may at any time revoke the authority granted to a chief, headman or chief's deputy under sub-section (1).
- (3) A judgment given by such chief, headman or chief's deputy shall be executed in accordance with the procedure prescribed by regulation under sub-section (6).
- (4) Any party to a suit in which a native chief, headman or chief's deputy has given judgment may appeal therefrom to any court of native commissioner which would have had jurisdiction had the proceedings in the first instance been instituted in a court of native commissioner, and if the appellant has noted his appeal in the manner and within the period prescribed by regulation under sub-section (6), the execution of the judgment shall be suspended until the appeal has been decided (if it was prosecuted at the time and in the manner so prescribed) or until the expiration of the last mentioned period if the appeal was not prosecuted within that period, or until the appeal has been **withdrawn** or has lapsed: Provided that no assistant native commissioner shall hear an appeal under this sub-section unless no native commissioner (as distinct from an assistant native commissioner) has any judicial jurisdiction in the said area, and provided further that no such appeal shall lie in any case where the claim or the value of the matter in dispute is less than five pounds, unless the native commissioner of the court to which the appellant proposes to appeal, has certified after summary enquiry that the issue involves an important principle of law.
- (5) The court of native commissioner may confirm, alter or set aside the judgment after hearing such evidence (which shall be duly recorded as may be tendered by the parties to the dispute, or may be deemed desirable by the court.
- (6) The minister may make the regulations mentioned in sub-section (3) and (4), and generally regulations prescribing the procedure which shall be followed in any action taken under this section.

13. (1) The Governor-General shall, as soon as practicable after the commencement of this Act, by proclamation in the Gazette, constitute one or more native appeal courts for the hearing of appeals in any proceedings from courts of native commissioners. Such proclamation shall define the area in respect of which the several appeal courts shall exercise jurisdiction.

- (2) A native appeal court shall consist of three members (one of whom shall be president).
- (3) The president shall be appointed by the Governor-General, and if not already a member of the public service of the union shall become a member thereof and shall receive such salary as the Governor-General may determine: Provided that if the president is unable to act as such the minister may appoint any person to act in his stead and, unless such person is a member of the public service, he may pay him such salary, not exceeding the salary paid to the president, as he may determine.
- (4) The members of the court other than the president shall be appointed, as required from time to time, by the minister, and shall be selected from magistrates, native commissioners or other qualified persons.
- (5) The Governor-General may from time to time make rules regulating-
- (a) the appointment and duties of the officers of the court, the records to be kept and the practice and procedure in the court;
 - (b) the mode of compelling the attendance of witnesses and assessors, and the allowances to be paid to them;
 - (c) the fees which may be charged by advocates and attorneys, costs as between party and party and as between attorney and client, and the taxation of costs;
 - (d) the fees and charges to be imposed and taken by officers of the court;
 - (e) the noting of appeals and the suspension of the judgment appealed against.
 - (f) the appearance of parties or of persons on their behalf in a native appeal court;
 - (g) generally, all such other matters relating to the courts as the Governor-General may deem necessary for the purposes of this section.
- (6) The native appeal courts shall sit at such times and places as the minister or, if delegated thereto by the minister, the Secretary for Native Affairs or the under-Secretary for Native Affairs, may, by notice in the Gazette appoint.
- (7) The decision of the majority of the members shall be the judgment of the court.
14. When the minister has any doubt as to the correctness of any decision given by a native appeal court on a question of law, he may submit that decision to the Appellate Division of the Supreme Court and cause the matter to be argued before it, in order that it may determine the said question and such determination shall be deemed to be the correct interpretation of the law for the future guidance of all native commissioners' courts and of all native appeal courts.
15. A native appeal court shall have full power to review, set aside, amend or correct any order, judgment or proceeding of a native commissioner's court within the area of its jurisdiction, or to direct a case from such a court to be retried or reheard or to make any such order upon the case as the interests of justice may require: Provided that no judgment or proceeding shall, by reason of any irregularity or defect in the record or proceedings,

be reversed or set aside unless it appears to the court of appeal that substantial prejudice has resulted therefrom.

16. (1) Advocates and attorneys of the supreme court of South Africa shall be entitled to appear in a court of native commissioner and in a native appeal court.
- (2) Every person who is entitled to practise as an agent in a magistrate's court within the area of jurisdiction of a court of native commissioner, but in no other court of native commissioner.
17. (1) As from the date on which a native appeal court having jurisdiction in the Province of Natal is constituted under section thirteen, the Natal Native High Court shall cease to have jurisdiction in any civil matter, and the power up till that date vested in the said High Court in respect of civil matters shall, in so far as they relate to matters coming within the jurisdiction of such native appeal court, vest in such court and so far as they do not relate to such matters, shall vest in the Natal Provincial Division of the Supreme Court.
- (2) As from the date on which a native appeal court having jurisdiction in the Transkeian Territories is constituted under section thirteen, the native Territories Appeal Court constituted under Proclamation No.145 of 1923 shall be abolished and the powers up to that date vested in such court shall in so far as they relate to matters coming within the jurisdiction of such first-mentioned native appeal court, vest in such court and in so far as they do not relate to such matters shall vest in the supreme court.
- (3) As from the date of the constitution in any area of the Province of the Transvaal of a court of native commissioner under section ten, the court of native commissioner previously existing in that area under the provisions of Ordinance No.3 of 1902 of the Transvaal shall be abolished.
- (4) As from the date of the constitution in any area of a court of native commissioner under this Act, a magistrate's court shall cease to have jurisdiction in that area in respect of any civil suit arising under section ten of this Act.
- (5) Any case pending in any court when the jurisdiction of that court is limited or determined by any provision of this section, shall be dealt with in every respect as if this section had not been enacted.
18. (1) Notwithstanding anything in any law contained, no appeal shall lie from the judgment of a court of native commissioner in respect of any action or proceeding except to a native Appeal court constituted under section thirteen, unless the native appeal court itself consents to an application for leave to appeal (upon any point stated by the said court) being made to the Appellate Division of the Supreme Court, subject in any event to the rules of the said Appellate Division.
- (2) Save as is provided in section fourteen and in this section, the decision of a native appeal court shall be final and conclusive.
19. (1) In any case in which a native appeal court or native commissioner's court deems it desirable, it shall be at liberty to call to its assistance, in an advisory capacity, such native assessors as the court may deem necessary.

- (2) The opinion of such assessors shall be recorded and form part of the record.

20. (1) The minister may -

Act 13 of 1955. (a) by writing under his hand confer upon any native chief or headman jurisdiction to try and punish any native who has committed, in the area under the control of the chief or headman concerned -

i) any offence at common law or under native law and custom other than an offence referred to in the **Third Schedule** to this Act; and

ii) any statutory offence other than an offence referred to in the Third Schedule to this Act, specified by the minister:

Provided that if any such offence has been committed by two or more persons any of whom is not a native, or in relation to a person who is not a native or property belonging to any person who is not a native other than property, movable or immovable, belonging to the South African Native Trust established by section four of the Native Trust and Land Act, 1936, or held in trust for native tribe or a community or aggregation of natives or a native, such offence may not be tried by a native chief or headman;

(b) at the request of any chief upon whom jurisdiction has been conferred in terms of paragraph (a), by writing under his hand confer upon a deputy of such chief jurisdiction to try and punish any native who has committed, in the area under the control of such chief, any offence which may be tried by such chief.

(2) The procedure at any trial by a chief, headman or chief's deputy under this section, the punishment, the manner of execution of any sentence imposed and subject to the provisions of paragraph (b) of sub-section (1) of section nine of the Bantu Authorities Act, 1951 (Act No.68 of 1951), the appropriation of fines shall, save in so far as the minister may prescribe otherwise by regulation made under sub-section (9), be in accordance with native law and custom: Provided that in the exercise of the jurisdiction conferred upon him under sub-section (1) a chief, headman or chief's deputy may not inflict any punishment involving death, mutilation, grievous bodily harm or imprisonment or impose a fine in excess of twenty pounds or two head of large stock or ten head of small stock or impose corporal punishment save in the case of unmarried males below the apparent age of thirty years.

(3) Any jurisdiction conferred upon a chief headman or chief's deputy under any provision of this Act before the date of commencement of the Native Administration Amendment Act, 1955, and which at that date has not been revoked under any such provision, shall be deemed to have been conferred under and subject to the provisions of this section.

(4) The minister may at any time revoke the jurisdiction conferred upon a chief, headman or chief's deputy under any provision of this Act before or after the commencement of the native Administration Amendment Act, 1955.

(5) (a) If a native chief, headman or chief's deputy fails to recover from a person any fine imposed upon him in terms of sub-section (3), or any portion of such fine, he may arrest such person or cause him to be arrested by his

messengers, and shall within forty-eight hours after his arrest bring or cause to be brought before the native commissioner in whose area of jurisdiction the trial took place.

- (b) A native commissioner before whom any person is brought in terms of paragraph (a) may, upon being satisfied that the fine was duly and lawfully imposed and is still unpaid either wholly or in part, order such person to pay the fine or the unpaid portion thereof forthwith and if such person fails to comply forthwith with such order, sentence him to imprisonment with or without compulsory labour for a period not exceeding three months.
- (c) Any person who has been convicted by a native chief, headman or chief's deputy under this section may in the manner and within the period prescribed by regulation made under sub-section (9), appeal against his conviction and against any sentence which may have been imposed upon him, to the native commissioner in whose area of jurisdiction the trial in question took place.
- (7) In hearing any appeal to him in terms of sub-section (6) the native commissioner shall hear and record such available evidence as may be relevant to any question in issue and shall thereupon either -
- (a) confirm or vary the conviction and -
- i) confirm the sentence imposed by the chief headman or chief's deputy and order that the said sentence satisfied forthwith; or
 - ii) set aside the sentence imposed by the chief, headman or chief's deputy and in lieu thereof impose such other sentence as in his opinion the chief, headman or chief's deputy ought to have imposed; and
 - iii) impose a sentence of imprisonment with or without compulsory labour for a period not exceeding three months on default of compliance forthwith with the order or sentence made or imposed under sub-paragraph (i) or (ii) or
 - iv) set aside the sentence imposed by the chief, headman or chief's deputy and in lieu thereof impose a sentence of imprisonment with or without compulsory labour for a period not exceeding three months without the option of a fine; or -
- (b) uphold the appeal and set aside the conviction and sentence.
- (8) The provisions of paragraph (c) of sub-section (5) shall apply mutatis mutandis in respect of any person who has been sentenced to imprisonment under sub-paragraph (iii) of paragraph (a) of sub-section (7) and who has failed to comply forthwith with the order or sentence made against or imposed upon him under him under sub-paragraph (iv) of paragraph (a) of the said sub-section.
- (9) The minister may make regulations -
- (a) in regard to all matters which by this section are required or permitted to be prescribed by regulation;
 - (b) prescribing the manner in which and the period within which an appeal under sub-section (6) shall be brought;
 - (c) prescribing the procedure to be followed in any action taken under this section.

The provisions of section ten of Act No.9 of 1929 not being amendments of or additions to any particular section of the Principal Act are herein set forth.

10. (1) Notwithstanding anything in any other law contained, the Governor-General may by proclamation in the Gazette establish native divorce courts which shall be empowered and have jurisdiction to hear and determine suits of nullity, divorce and separation between natives domiciled within their respective areas of jurisdiction in respect of marriages and to decide any question arising therefrom.
- Provided that the matrimonial Causes Jurisdiction Act, 1939 (Act No.22 of 1939) shall mutatis mutandis apply with reference to the powers and jurisdiction of such courts.
- (2) The area of jurisdiction of any court established under sub-section (1) shall coincide with that of a native appeal court established under section thirteen of the Principal Act.
- (3) (a) Every such court shall be a court of law and shall consist of so many divisions as the Governor-General may from time to time determine.
- (b) A division of the court shall consist of a president who shall be the person for the time being holding the appointment of president of the native appeal court exercising jurisdiction in the same area or any such other officer of the public service as the Governor-General may appoint, and sittings of two or more divisions may be held simultaneously.
- (c) The president of a division of the court may in his discretion summon to his assistance two persons holding the office of native commissioner to sit and act with time as assessors in an advisory capacity on questions of fact.
- (4) The provisions of sub-sections (5) and (6) of section thirteen and sub-section (1) of section sixteen of the Principal Act in relation to native appeal courts shall mutatis mutandis apply in respect of native divorce courts established under this section.
- (5) An appeal from the judgment of a native divorce court shall lie to the provincial or local division of the Supreme Court having jurisdiction.
- (6) Such appeal shall be noted and prosecuted as if it were an appeal from a judgment of a magistrate's court in a civil matter, and all rules applicable to such last mentioned appeal whether in respect of the hearing thereof or of the confirmation or settling aside of the proceedings appealed against, or otherwise, shall mutatis mutandis apply to an appeal under this section.
- (7) Nothing in this section shall be construed as in any manner divesting the Supreme Court of jurisdiction in respect of any matter specified in sub-section (1).

ACT 38 of 1927 (Continued).

21. (1) Notwithstanding anything to the contrary in this Act contained, a native chief in British Bechuanaland shall -
- (a) have original and exclusive jurisdiction to hear and determine all civil causes and matters (other than matters in which a decree of nullity, divorce, or separation in respect of a marriage is sought) arising between natives of his own tribe; and

- (5) Any claim or dispute in regard to the administration or distribution of any estate of a deceased native shall, if any of the parties concerned is not a native, be decided in an ordinary court of competent jurisdiction.
- (6) In connection with any such claim or dispute, the heir, or in case of minority his guardian, according to native law, if no executor has been appointed by a Master of the Supreme Court, shall be regarded as the executor in the estate as if he had been duly appointed as such according to the law governing the appointment of executors.
- (7) Letters of administration from the Master of the Supreme Court shall not be necessary in, nor shall the Master or any executor appointed by the Master, have any powers in connection with, the administration and distribution of -
- (a) the estate of any native who has died leaving no valid will; or
 - (b) any portion of the estate of a deceased native which falls under sub-section (1) or (2).
- (8) A Master of the Supreme Court may revoke letter of administration issued by him in respect of any native estate.
- (9) Whenever any native has died leaving a valid will which disposes of any portion of his estate, native law and custom shall not apply to the administration and distribution shall in all respects be in accordance with the administration of estates Act, 1913 (Act No. 24 of 1913).
- (10) The Governor-General may make regulations not inconsistent with this Act -
- (a) prescribing the manner in which the estates of deceased natives shall be administered and distributed;
 - (b) defining the rights of widows or surviving partners in regard to the use and occupation of the quitrent land of deceased natives;
 - (c) dealing with the disheirson of natives.
 - (d) prescribing the powers and duties of native commissioners or magistrates in carrying out the functions assigned to them by this section;
 - (e) prescribing tables of succession in regard to natives; and
 - (f) generally for the better carrying out of the provisions of this section.
- (11) Any native estate which has, prior to the commencement of this Act, been reported to a Master of the Supreme Court shall be administered as if this Act had not been passed, and the provisions of this Act shall apply in respect of every native estate which has not been so reported.

CHAPTER VI.Legislation.

24. (1) Notwithstanding anything to the contrary in Natal No.19 of 1891, the Governor-General may from time to time, by proclamation in the Gazette, amend the provisions of the Natal Code of Native Law which code or any amendment thereof shall remain of full force and effect except in so far as amended under the provisions of this section: Provided that no such proclamation shall have any force or effect until one month has elapsed from the date of its promulgation in the Gazette.
- (2) The Governor-General may, by proclamation in the Gazette, extend the the operations of the Code of Native Law mentioned in sub-section (1) and any amendment thereof to Zululand in the Province of Natal.
25. (1) From and after the commencement of this Act any law then in force or subsequently coming into force within the area then in force or subsequently coming into force within the areas included in the Schedule to the Natives Land Act, 1913 (Act No.27 of 1913), or any amendment thereof, or such areas as may by resolution of both Houses of Parliament be designated as native areas for the purposes of this section, may be repealed or amended, and new laws applicable to the said areas may be made, amended and repealed by the Governor-General by proclamation in the Gazette.
- (2) Save where delay would, in the opinion of the Governor-General, be prejudicial to the public interest, no such proclamation shall be issued unless a draft of its provisions or of its principal provisions shall have been published in the Gazette at least one month previously; but the omission of such publication shall not invalidate any such proclamation.
- (3) Nothing in this Act contained shall affect the powers vested in the Governor-General under the Transkeian Annexation Act, 1877 (Act No.38 of 1877), the Walfish Bay and St John's River Territories Annexation Act, 1884 (Act No.35 of 1884) so far as it relates to the St Hohn's River Territory, the Tembuland Annexation Act, 1883 (Act No.3 of 1885), and the Transkeian Territories, Tembuland and Pondoland Laws Act, 1897 (Act No.29 of 1897) of the Cape of Good Hope
26. (1) Every proclamation issued by the Governor-General under the authority of this Act shall be laid upon the Tables of both Houses of Parliament within fourteen days after its promulgation if Parliament is then in ordinary session, or if Parliament is not then in ordinary session within fourteen days after the commencement of its next ensuing ordinary session, and every such proclamation shall be in operation unless and until both Houses of Parliament have by resolutions passed in the same session, requested the Governor-General to repeal such proclamation or to modify its operation, in operation, in which case such proclamation shall forthwith be repealed or modified as the case may be, by a further proclamation in the Gazette.
- (2) If the Native Affairs Commission established in terms of section One of the Native Affairs Act, 1920 (Act No.23 of 1920), has dissented from any provision contained in a proclamation issued under section twenty-five, the record of, and the reason for, such dissent shall, when the proclamation is laid upon the Tables of both Houses of Parliament as aforesaid, simultaneously be so presented to Parliament.

CHAPTER VII.Prevention of Misconduct and Disorders,
Regulation of Native Living, and Control
of Certain Villages and Townships.

27. (1) The Governor-General may make regulations with reference to all or any of the following matters:-
- (a) the exhibition of pictures of an undesirable character in any location or native compound or in any urban location or native village constituted under the Natives (Urban Areas) Act, 1923 (Act, No. 21 of 1923),
 - (b) the carrying of assegais, knives, kerries, sticks or other weapons or instruments by natives;
 - (c) the prohibition, control or regulation of gatherings or assemblies of natives;
 - (d) the observance by natives of decency;
 - (d) bis the prohibition, restriction or regulation of -
 - i) the sale (within areas to be defined in the regulations) of goods to natives employed on mines or work otherwise than on payment in cash of the full purchase price of the goods;
 - ii) the lending of money by traders (including persons licensed under sub-section (2) of section One hundred and twenty - seven of the Liquor Act, 1928 (Act No.30 of 1928), to sell Kaffir beer) or the recovery of money lent by traders (including persons so licensed) to natives so employed;
 - iii) the presence of traders (including persons so licensed) or their representatives at places within areas to be defined in the regulations where natives so employed receive their wages and while they are being paid their wages;
 - iv) the giving of any assistance, whatsoever, whether direct or indirect or indirect, by owners or managers of or persons employed on mines or works to traders (including persons so licensed) in the collection of debts owing to them by natives so employed; and
 - v) generally, the giving of credit by traders to natives employed;
 - (d) ter the control or regulation of any tribal practice involving the mutilation or removal of or any operation upon any part of the body;
 - (d) quater. the prohibition, restriction or regulation of
 - i) the advertising to natives, whether by word of mouth or by any other means of any substance alleged to be capable of procuring for any person wealth or success in any undertaking or occupation or of producing in any person any disposition or attribute or immunity from, resistance against or susceptibility to hostile agencies, supernatural powers, witchcraft or unnatural diseases; and

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- (e) generally for such other purposes as he may consider necessary for the protection, control, improvement and welfare of the natives, and in furtherance of peace, order and good government the generality of the power conferred by this paragraph not being limited by the provisions of the preceding paragraphs.
- Act 54/1952.
- (2) Any such regulations may be made applicable only in any particular areas or in respect of particular classes of persons, and different regulations may be made for different areas or in respect of different classes.

28. (1) The Governor-General may, by proclamation in the Gazette -

- (a) create and define pass areas within which natives may be required to carry passes;
- (b) prescribe regulations for the control and prohibition of the movement of natives into, within or from any such areas; and
- (c) repeal all or any of the laws relating to the carrying of passes by native:

Provided that no area included in the Schedule to the Natives Land Act, 1913, (Act No.27 of 1913), or any amendment thereof, shall be included within a pass area.

- (2) Such regulations may provide penalties for any breach thereof not exceeding a fine of five pounds or imprisonment with or without hard labour for a period not exceeding three months.

29. (1) Any person who utters any words or does any other act or thing whatever with intent to promote any feeling of hostility between natives and Europeans shall be guilty of an offence and liable on conviction to imprisonment for a period not exceeding one year or a fine of one hundred pounds or both.
- (2) If it appears to a magistrate on information made on oath that there are reasonable grounds for suspecting that there is upon any premises within his jurisdiction -
- (a) anything as to which there are reasonable grounds for believing that it will afford evidence as to the commission of any such offence; or
- (b) anything as to which there are reasonable grounds for believing that it is intended to be used for the purpose of committing any such offence,

he may issue his warrant directing a policeman or policemen named therein or all policemen to search such premises and to seize any such thing if found and take it before a magistrate. If any magistrate before whom any such case is brought is satisfied that it is anything which may reasonably be calculated to cause or promote any feeling of hostility between natives and Europeans he may by writing authorize the destruction thereof or its confiscation to the Crown but no such order shall be carried into effect until a period of one month has elapsed after the date of such order and the decision of the magistrate in that behalf shall be subject to review.