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Act No. 1 of 1948

[PASSED BY THE DOMINION LEGISLATURE]

(Received the assent of the Governor General on the 5th January 1948)

An Act to provide for the enlargement of the appellate jurisdiction of the Federal Court in civil cases.

WHEREAS it is expedient to provide for the enlargement of the appellate jurisdiction of the Federal Court in civil cases;

It is hereby enacted as follows:—

1. Short title and commencement.—(1) This Act may be called the Federal Court (Enlargement of Jurisdiction) Act, 1947.

(2) It shall come into force on the first day of February, 1948, which day is hereinafter referred to as "the appointed day".

2. Definitions.—In this Act,—

(a) "High Court" means any High Court to which the provisions of Chapter II of Part IX of the Government of India Act, 1935, apply;

(b) "judgment to which this Act applies" means any judgment, decree or final order of a High Court in a civil case from which a direct appeal could have been brought to His Majesty in Council, either with or without special leave, if this Act had not been passed.

3. Enlargement of the Federal Court's jurisdiction.—As from the appointed day,—

(a) an appeal shall lie to the Federal Court from any judgment to which this Act applies—

(i) without the special leave of the Federal Court, if an appeal could have been brought to His Majesty in Council without special leave under the provisions of the Code of Civil Procedure, 1908, or of any other law in force immediately before the appointed day, and

(ii) with the special leave of the Federal Court in any other case;

(b) in any such appeal as aforesaid it shall be competent for the Federal Court to consider any question of the nature mentioned in sub-section (1) of section 205 of the Government of India Act, 1935; and

(c) no direct appeal shall lie to His Majesty in Council, either with or without special leave, from any such judgment.

4. Continuance of certain proceedings in High Courts.—All proceedings and steps taken in, and orders made and certificates granted by, a High Court in connection with an appeal to His Majesty in Council from a judgment to which this Act applies shall, unless the records pertaining to such appeal have before the appointed day been transmitted by the High Court concerned to His Majesty in Council, be deemed to be proceedings and steps taken, orders made, and certificates granted, in connection with an appeal from that judgment to the Federal Court under this Act, and shall be concluded, or as the case may be, have effect, accordingly.

5. Pending applications for special leave to appeal.—Every application to His Majesty in Council for special leave to appeal from a judgment to which this Act applies remaining undisposed of immediately before the appointed day shall on that day stand transferred to the Federal Court by virtue of this Act, and shall be disposed of by that Court as if it had been an application duly made to that Court for special leave to appeal from the said judgment.

6. Modification of existing laws.—The provisions of the Code of Civil Procedure, 1908, and of any other law in force immediately before the appointed day relating to direct appeals in civil cases to His Majesty in Council shall, as from that day, have effect in relation to any appeal from a judgment to which this Act applies as if in the said provisions, for all references to His Majesty in Council, there had been substituted references to the Federal Court.

7. Savings.—The preceding provisions of this Act shall not apply to any appeal—

(a) which immediately before the appointed day is pending before His Majesty in Council, if the records pertaining to such appeal have before that day been transmitted by the High Court concerned to His Majesty in Council; or

(b) to the bringing of which to His Majesty in Council special leave has been granted before the appointed day;

and any such appeal may be disposed of by His Majesty in Council as if this Act had not been passed.

8. Registrar's certificate to be conclusive as to fact of transmission of records.—If any question arises under section 4 or section 7 whether the records pertaining to an appeal have before the appointed day been transmitted by the High Court concerned to His Majesty in Council a certificate of the Registrar of the High Court that they have been transmitted or not transmitted before the appointed day shall be conclusive evidence on the question.