SEDUCTION IN NATIVE LAW IN NATAL.

The Native law of seduction in Native law in Natal is laid down in Section 137 of the Natal Code of Native Law which provides:—

① The seduction of an unmarried female gives rise to an action against the seducer in damages for the ngqutu beast. In addition to such a beast a further beast may be awarded as damages in respect of each and every child which such woman bears to the seducer, provided that such child or children be born during the subsistence of an engagement no claim to damages shall be recognised unless the marriage does not take place; provided further that should the seducer marry the woman, payments other than the ngqutu beast made in respect of the seduction shall be regarded as forming parts of the lobolo.

② Any person having illicit intercourse with a divorced woman or widow as the result of which a child is born, shall be liable in damages to her father or guardian, such damages not to exceed one beast in respect of each child so born. In the event of a subsequent customary union between the parties, any payment of damages shall be regarded as forming part of the lobolo.

③ Any claim for damages in respect of the seduction of, or illicit intercourse with a girl or woman, is extinguished by the death of such girl or woman unless her death is due to child-birth consequent upon such seduction or illicit intercourse.

Comment.

① A distinction is drawn in Natal between the seduction of an unmarried girl on the one hand & ~~the~~ illicit intercourse with a divorced woman or a widow. In the case of an unmarried woman damages are payable ① for the seduction ~~+ (2)~~ for the pregnancy, if any which supervenes; in the case of the divorced woman or the widow damages are only payable for the pregnancy, if any, which supervenes & the child born as a result.

② The damages in Natal are fixed ① one for seduction & (2) one for every born as a result of the ~~seduction~~ intercourse.

③ Where damages other than for seduction are concerned, they form part of the lobolo of the parties eventually marry one another

④ In either case the action for damages lapses if the woman concerned dies unless her death is due to childbirth resulting from the intercourse.

⑤ These damages are claimable by the father or guardian of the woman.

The Right to Sue

Under Native Law (proper) the girl has no action against her seducer nor has a divorced woman or widow with whom illicit intercourse has been committed (see Stoffel, p. 126). In the case of Mhefo vs Raikana (1942) N.A.C. (T+N) 16, a Transvaal case, the Court said "It is a case tried under Native Law for the claim is cattle(?) Under Native Law the father or guardian of a girl who has been seduced is entitled to claim damages, but the girl herself cannot claim. The father or guardian is the person who is paid lobolo for a girl on her marriage. Her lobolo value is reduced if she has been seduced before marriage. The father is consequently entitled to claim damages from her seducer. In Native law it is not considered that the girl herself has suffered any damage. She is a minor and cannot own property ... The legal guardian is the only person who can sue."

There is nothing in law to prevent a native girl from suing for damages for seduction under the Common law (see Bori vs Xozwa 4 N.A.C. 300; Qoba vs Poswayo (1945) N.A.C. (C+O) 45. Mlaqwenbeni vs Molete (1930) N.A.C. (C+O) 40; Nzala vs Mlaneko (1931) N.A.C. (T+N) 41; Mseleku vs Mayola 1937 N.A.C. (T+N) 67.

The Amount of Damages

In connection with the question of the quantum of damages in seduction cases in Native Law it has been suggested that the issue be considered "in relation to the native background and the native social and economic conditions involved and in the light of reality, rather than the idealised generalities which have hitherto induced the Courts to disregard the actualities and to apply principles of practices of Europeans to Natives as if they were Europeans living under European social and economic conditions" (Yako vs Beyi (1944) N.A.C. (C+O) 72. In that case the Court referred to the fact that the approach to the problem was "obscured by the plaintiff's deliberate and elaborate forcing the issue into a European mould, departing from Native law in an endeavour to obtain greater relief than that afforded by that system".

The real problem here is whether in assessing damages account should be taken of other factors ~~other than~~ besides the loss of virginity, such as the status of the woman or of her guardian, the educational standard of the woman. It seems inequitable that the seduction of the daughter of a Chief should carry no greater damages than that of the daughter of a commoner. Thus it has been held that "even cadets in major selling houses are not entitled to special damages – much less so a headman; and by parity of reason his daughter living with him in the Reserve" (Dalisile vs Dunguba (1940) N.A.C. (C&O) 83 Similarly it has been held that "the fact that the parties are 'dressed' (i.e. unsophisticated) Natives is not in itself ground to warrant special damages" (Kabingwe vs Mahlinza 2 N.A.C. 36. It was admitted that education to Matriculation, which left the girl without a knowledge of English, entitled her to special damages. There is to day no abnormal achievement whatever advantage that elementary learning induced (Kambule vs Kunene (1932) N.A.C. (T&N) 18) which though it conflicts with Cape decisions, is much to the point. ~~Under~~

It has also been suggested that some attention should be paid to the "surrounding names of the parties which in themselves ... are worthy of special consideration if not special damages. But the Court argued that "the damage is exactly the same in each case viz the loss of virginity which Native society appraises at the same value in each & all, save in the rare exceptions of the Ruling Houses". The Court quoted with approval the following remarks of Brownlee, A.P. in: Mbongwana vs Ngobozela & another 3 N.A.C. 256 "It has been argued that in any case the person injured is the plaintiff's daughter and not the plaintiff himself, but in the opinion of this Court in cases of this kind it is the Native father who suffers real injury, for while among Europeans the injury is more to the outraged sense of propriety and morality, yet in Native Cases the injury is real and natural, for the father looked to his daughters to build up the fortunes of his house by means of their dowries (lobola) and the deflowering of any one daughter has the immediate effect of depreciating her marriageable value"

In the case of Ntshenka vs Nzelekaye 3 N.A.C. Warner P, dealing with the question of educated Natives said: –

It does not necessarily follow that because defendant was educated & baptised & married in a Christian church he has abandoned all Native methods & customs. A customary award of five head of cattle or £25 would be ample to compensate the aggrieved party, even if the Court hears the girl herself and not the guardian who alone is the sufferer. There seem to be no grounds for differentiating between the guardian who sued to enforce his rights after the girl had received compensation and was refused a right of action on the grounds of equity (Boni vs Xozwa 4 N.A.C. 310), and the girl suing in her own right, whatever that may be, if any, on Native custom, & give her more than the guardian, the injured party in the eyes of the law, was entitled to claim.

A series of cases indicate that the rule of law that no one shall unjustly enrich himself at the expense of another operates in these cases.

In Cebisa vs Ewebu 4 N.A.C. 330 it was agreed that the damages awarded to the plaintiff, (the seduced girl) should be the difference between what her guardian, with her knowledge, had already received & the usual damages in Native cases.

In Nodada vs Nokoena (1942) N.A.C. (C&O) 80 the Court approved of the decision in Magodumana vs Sibaca 3 N.A.C. 4 that a husband was entitled to damages ordinarily awarded among Natives (suing under Common Law)

In Ndodoza vs Tshanova (1939) N.A.C. (T&N) 64 the Court said "It is considered that monetary damages ~~should~~ awarded under Common Law should bear some relation to the amounts which Natives generally are accustomed under their own law & custom. The parties are Natives, and it is well known that matters of matrimonial infidelity among Natives are not viewed by them as serious a light as they are by Europeans"?

In Mpanza vs Letsoo (1938) N.A.C. (T&N) 121 the Court said "This Court will not countenance any attempt by a father of a seduced girl to profit from his daughter's lapse by awarding greater damages than are allowed by Native law, bearing in mind that at most the damages as in the Common Law are reparation for the reduced marriage value or, as put in the Common Law, reduced marriage

prospects of the girl, which in the case of Natives is valued at no more than a beast or so off the lobolo – in some tribes nothing at all as the child is taken with the mother, on the principle that her products are included'

?

Other cases in which it was decided that a girl suing in her own right is not entitled to greater damages than her guardian include Matyelwa vs Ntsebeza (1940) N.A.C. (C&O) 89; Mseleku vs Magola (1937) N.A.C. (T&N) 67; Kambule vs Kumene (1932) N.A.C. 18.

Church Discipline

The question has been raised as to whether the fact that the seduced girl was put under church discipline should be taken into account in deciding on the quantum of damages. In dealing with this point in Godongwana vs Ruweli 1 N.A.C 54 the Court said: "From the moral point of view she (the seduced girl) was as much to blame and the circumstances that church discipline was exercised in her case can hardly be brought in as aggravation against the seducer. Plaintiff is in fact no more nor less than an ordinary Native peasant girl residing in a Native location and holding no post of any kind, which would make her case analogous with those like Mqqwentshe's, where there was resulting loss of that position, whatever advantage that might be regarded as a ground for special damages beyond the deflowering (Mqqwentshe vs Mokite 1930 N.A.C. (C&O) 40.

Detribalised Natives.

In Nzalo vs Moseko (1931) N.A.C. (T&N) 41. dealing with the position of detribalised Natives the Court said: "Natives, too, living in large industrial centres, as these do, and having become detribalised and adopted standards of living and outlook of the more enlightened classes are to be regarded as in a light wholly different to the primitive order of society of the Kraal." this view was also expressed in the case of Ramothata vs Makhothe (1934) N.A.C. (T&N) 44.

But in Ngwane vs Nzamande (1936) N.A.C. (T&N) 70 the idea of a class distinction based on education, religion or exemption was contested as uncertain and unstayable, just as residence in an urban area where tribal as well as so-called detribalised Natives live cheek by jowl. The view was expressed that the damages incurred by the seduction of a Native girl

remain the same whether she or the guardian sue, & by equity she should not be allowed a greater amount than that to which the guardian is entitled under Native law, irrespective of the fact that the action is brought under Common law. The same reasoning applies to breach of promise to marry, where the loss also falls on the guardian suit on the girl who in Native society does not herself transact the negotiations for the marriage. "In consideration of the foregoing views of the Court based on practical social conditions of the Natives son equity the Court finds

(a) That it is inequitable that a Native litigant by recourse to common law should force his opponent into a position of having to pay a greater sum under Common law than is allowed under Native law for the same injury

(b) That where a seduced girl sues in her own right she is not entitled to greater damages than her father or guardian would receive under Native law

(c) That among Natives, especially those living under ordinary conditions in Native Reserves, the girl does not herself usually enter into a contract to marry. The breach of such contract to marry results in loss to the party who would have benefitted thereby, viz the person who would receive her lobolo i.e. her father or guardian.

(d) That even in Common law, the action is one based on contract where the measure of damages is actual loss or estimated actual loss

? (e) Although sentimental damages have been awarded by Courts in European cases, the practice is legally illogical. The award is in any event based on the varied social practices & considerations of European society and the award, if any, varied with the position of the woman in that society. . . . . .

(f) Since there is no action for damages for breach of promise in Native law beyond forfeiture or earnest or instalment cattle paid by the suitor (Gwayi vs Gwaya 1 N.A.C. 235) it would, on the finding of (a) above, be inequitable to grant a Native female sentimental damages"

Virginity & Pregnancy

Seduction can only take place in respect of a girl who is a virgin (Ndlozi vs Rex (1909) N.H.C. 5. As far as non-virgins are concerned the question of damages only arises where the intercourse has been followed by pregnancy and a child is born. As has been stated "under Native Law the universally recognised custom is that a beast is payable for each child born whether to a virgin or to a girl who is not a virgin" (Nxumalo vs Nzuza (1936) N.A.C. (T&N) 36.

As was stated in Mantiti vs Dingindewo (1927) A.D. 355. a clear distinction is drawn between the seduction of a girl and the birth of a child. The seducer is liable to pay one beast as damages to the mother of the girl known as Ngqutu, and in addition the father or guardian is entitled to an imvimba beast for each pregnancy, that being the measure of the loss or damage which he has suffered by reason of each pregnancy depreciating or diminishing the lobolo by one head of cattle. In Natal in terms of section 137(1) of the Code a seducer is liable for the payment of two head of cattle, the ngqutu and the imvimba, for seducing the girl and causing her to bear a child. When a girl receives the ngqutu beast is usually paid to her mother if alive, but if she is deceased at the end of her husband or through no fault on the part of her husband if she wilfully deserts or abandons his kraal, her right ceases and determines and it becomes the property of the house to which she belonged (s. 96 of the Code) and there is nothing in the Code to indicate that the mother of an illegitimate child is not entitled to the ngqutu beast (Ngcobo vs Kumalo (1942) N.A.C. (T&N) 47.

Effect of Engagement

The question has been raised as to whether an action for damages for seduction & pregnancy lies where the seducer is engaged to the girl concerned. In Natal there is a proviso to section 137(1) which reads "provided that should such child or children be born during the subsistence of an engagement no claim to damages shall be recognised unless the marriage does not take place" According to this proviso where the seducer is engaged to the girl concerned he is only liable in damages for the deflioration i.e. for the ngqutu but where ~~the~~ pregnancy supervenes he is not liable in damages for the child born unless he fails at

a later stage to marry the girl. It is doubtful whether this proviso is in accordance with the true principles of original native law. It was pointed out in Msweli v Hlekwayo (1941) N.A.C. (T&N) 119. "This is a new proviso which was not embodied in the old code and there is no doubt that the great majority of our Native population is unaware of it. It is common knowledge that in practice the damages claimable on seduction of a woman and on the birth of children are demanded & paid whether an engagement exists or not, in Zululand, at any rate, the chief generally fines the seducer even if he is engaged to the girl. It is also the case that in most ~~cases~~ instances the seducer and the girl are lovers who contemplate marriage at some time or other. If it were to be held that the proviso applies to all cases involving lovers who hope to marry some day, and who therefore must be regarded as engaged, then there would be few cases in which damages would be claimable. Such a state of affairs would be contra bonos mores. It would be an encouragement to illicit cohabitation. A man could choose to live with a woman for a lengthy period, to have children with her and to resist any claim to damages on the plea that he was engaged to her. He could choose to defer payment of lobolo for ten or twenty years or longer, even if he had the intention to enter into marriage eventually. The whole moral code of the Native population would be in danger of being undermined. The legislature could not have intended the creation of such a state of affairs. It is therefore on this basis to give that interpretation to section 137 (1) which in its opinion, was intended by the legislature, and the meaning of the word 'engagement' is of paramount importance in this connection. According to Native custom an engagement is entered into only with the approval of the man and woman and of the woman's father or other natural guardian. The man sends his 'abakongi' to interview the woman's guardian; the question of lobolo is discussed and an agreement reached with the woman thereafter.

pays a short visit to the man's kraal, but she returns to her father's kraal and remains there until the time of the marriage. It is certainly not in accordance with native custom for the woman to live with her fiancé before her marriage. We are aware that such cohabitation does, nowadays, often take place in some parts of the country because of the deterioration of the moral standard, but it is a departure from recognised native custom. If a woman's father or guardian does, nevertheless, consent to cohabitation before marriage and considers that an engagement does exist, then he would have no claim for damages if children are born, in view of the proviso, but if he has not been approached for his consent to an engagement, or having his consent objects to cohabitation, then I think we must hold that the fundamental essentials of a valid engagement are lacking and that damages are claimable if children are born". In the words before the proviso can be applied it must be proved that an engagement does in fact subsist between the man and the woman. In Madlala vs Mbata (1939) N.H.C. (T&N) 141 the Court allowed the father of the girl, who had broken off the engagement between the man & the woman, two head of cattle for the seduction of the girl who had given birth to a child as a result thereof, one beast was for the deflloration (ngqutu) and the other for the child born (vumba).

What extra damages are payable?

In Davis vs Dali (1918) N.H.C. Chadwick J. said "On the question of damages, according to my experience of Native law and customs, when a girl has been seduced, one head of cattle is paid for an ngqutu that is for the damage, and another is paid as umgezo, that is to remove the stain, and I don't know that under Native law, pure and simple, any other claim could be made for damages. Whatever may be a local custom on the point — and there is no doubt that most Natives look upon the umgezo fee as payable and many claim extra damages as well — the decided cases are against the payment at least of damages.

Seduction & Lobolo

The question may be raised as to what the effect on the question of damages for seduction is where the seducer subsequently marries the girl in question. In Ndhlovu vs Sosibo (1937) N.A.C. (T&N) 102 the Court said "It is a general custom that in cases where seduction has taken place, this claim is first disposed of and then the question of lobolo is discussed. In Natal according to section 137 of the Code the damages paid for seduction are regarded as part of the lobolo (see also Ndhlabose vs Zwane (1937) N.A.C. (T&N) 73.

Seduction & Death.

Death of Seducer

In Natal under section 137(3) of the Code of Native Law a claim for damages for seduction is extinguished by the death of the girl unless the death is due to childbirth consequent upon such seduction unless the plaintiff can show that the girl died from the effects of miscarriage he cannot succeed in his action (Ndhlovu vs Sosibo (1937) N.A.C. (T&N) 102. The argument in favour of the rule that

Death of Seducer

on the death of seducer the action lapses was stated in Mkhango vs Ngcobo (1938) N.A.C. (T&N) 155 in which the Court said: "There is much to be said for this view. For assuming that an action does lie notwithstanding the death of the seducer, if it is commenced after the death of the wrongdoer it becomes a claim against a deceased estate, and the fullest proof becomes necessary, especially if the association of the man and the woman was casual and not public property as in this case. Not only this, but it becomes almost impossible to decide the issue in the absence of the most material witness in the case, namely the deceased. Thus by the application of the rule in Dhlamini vs Dhlamini (1934) N.A.C. (T&N) 21, a plaintiff would normally fail in such circumstances. (For further authorities on this point see Mckerron "Delict in S.A." p. 196 and Voet 48.5.5. who says that the action is passively transmissible but not actively transmissible before litis mota i.e. "that the death of the girl terminates the action, death of the seducer does not".)

Seduction & Venereal Disease

In Bongobiya vs Ngcaumeau (1905) N.H.C. 32 the Court refused to allow a claim for the girl's death from venereal disease on the ground that "there is nothing to show that the death of the plaintiff's daughter arose in any other way than as a result of disease, however unlawful her lover's act may have been, it has not been alleged or proved to be malicious." In Potwana vs Sigcau (1942) N.A.C. (C&O) 98 an appeal was dismissed on the ground that if the defendant had had intercourse with the girl in question she would have contracted venereal disease as the defendant was then suffering from gonorrhoea.

Seduction & Report.

It has been held that there is an established Native custom of making a report to the people of the seducer's kraal, thus giving the women a chance of examining the girl for themselves, as the custom requires the facts to be made capable of verification by the attendance of the seduced girl for inspection by the women of defendants' kraal.

Native custom also requires the deflowered girl to report her condition to her parents who thereupon proceed to the seducer to claim damages.

N.B. Two reports require to be made viz ① by the girl to her parents ② by the parents of the girl to the seducer.

The decisions of the Native Appeal Courts require these reports to be made immediately (Mcunu vs Cumedo (1939) N.A.C. (T&N) 6; Mntaka vs Ngcobo (1941) N.A.C. (T&N) 29.

Failure to make the report engenders suspicion against the complainant (Mthembungo vs Rex (1913) N.H.C. 21, while the making of the report tends to add credence to the story of the complainant (Mlini vs Rex (1916) N.H.C. 150; Mpulelani vs Ningwaqa, (1927) N.H.C. 40.

It must be remembered, however, that the mere fact of reporting seduction does not determine the guilt of the accused person. It merely is of importance in testing the bona fides of the complainant. i.e. the report is not conclusive evidence of the facts reported. Where, therefore,

there is good reason shown why the report was not made as e.g. through fear, the omission to do so would not be treated very seriously (Sebepu v Rex (1914) N.H.C. 38.

Evidence of Seduction

The question may be raised to the what view should be taken where a girl accuses a man of having seduced her and the man denies the allegation. To whose evidence should greater weight be given?

As a rule the unsupported testimony of the girls' evidence is regarded as insufficient against the denial of the man. As was stated in the case of Ntombela v Pelesio (1938) N.A.C. (T&N) 201. "The law in regard to the degree of corroboration required to support the girls' evidence is fully discussed in Maelelea v Mayola (1937) N.A.C. (T&N) 67. The rule applicable to such cases is briefly as follows:- 'The plaintiff who seeks to fix paternity of an illegitimate child on a man must clearly prove it, and must be corroborated by some independent testimony; and in case of doubt judgment must be given in favour of the defendant'. There must be some other evidence apart from the girls' own statement and bearing on the question of the girls' seduction, in order that the Court may believe the girl rather than the man. Mere matters which lead one to believe that probably seduction may have taken place, matters deposed by the girl and also admitted by the man, are not sufficient corroborative evidence that the law requires. It is clear, therefore, that a very strong onus rests on the girl who seeks to fix the responsibility for her seduction on a particular man. ... The absence of report by the girl at the time of the alleged offence - the absence of corroboration required both at Common Law & Native Custom, all tend to invalidate the charge. (See also M'Tembu v Radebe (1945) N.A.C. (T&N) 1 Bibi v Lebyothoane (1941) N.A.C. (T&N) 58; Gonde v Mtembu (1943) N.A.C. (T&N) 10.

But once the plaintiff proves that sexual intercourse has

taken place, the onus then rests upon the defendant to show that she was not a virgin at the time or that it was physically impossible for him to be the father of plaintiff's child. (Mnyapa & ano. vs Hlongwana (1933) N.A.C. (T+N) 26.

Seduction & Ukuhlobonga (ukumetsha).

The practice of 'ukuhlobonga' (external sexual intercourse) is recognised among the Natal Nations & gives rise to no claim for damages (Sindane vs Nebhokaji (1930) N.A.C. (T+N). The corresponding custom among Cape tribes (Xhosa-speaking) is ukumetsha (pseudo-sexual intercourse); there to a parent or guardian who objects to his daughter or ward being the subject of the custom has no remedy against the sweetheart (Kibidiwa vs Makanda, 4 N.A.C. 226; Qabazayo vs Ncoso, 2 N.A.C. 7; Nkonge & ano. vs Magesi (1945) N.A.C. (C+O) 18.

Comment: Where a parent or guardian catches a young man in the act of "hlobongo"-ing or "metsha"-ing with his daughter he is entitled to flog the young man. Self-help is a remedy in this case.
Among the Basuto the ukumetsha is not practised (Mpao vs Remabele (1940) N.A.C. (C+O) 149 and among the Basuto the fine for ukumetsha without seduction is one head of cattle (Gcwabe vs Mgilengwa & ano. (1944) N.A.C. (C+O) 87

Seduction among Cape Tribes

i. Among the Xhosa-speaking tribes, seduction i.e. the carnal connection of a man with a virgin & as a general rule entitles the father or guardian of a girl to an action for compensation for in damages, the damage consisting in the loss of her virginity and her consequent deterioration in the marriage market. ~~The action~~

ii. The action is usually instituted by the father or guardian of the seduced girl.

iii. Native law is usually applied over the common law except where the girl herself institutes the action. At the same time it may be remarked that many of the principles of the two systems are practically identical. eg

(a) Under both systems the virginity of the unmarried woman is presumed and the onus of proving the contrary is upon the person disputing it.

(b) Under both systems once carnal connection is established or admitted the woman's oath as to paternity is preferred to that of the man & he can only escape liability by conclusive proof of the impossibility of the child being his (See Ntunde vs Kleinbooi (1935) (1 P.H. 31) and Sontundu vs Bomanosana. 3 N.A.C. 261 in which it was stated that "under native customs of intercourse is proved, the woman's statement as to paternity is usually believed although more than one man may have cohabited with her, but there are cases where, if it is shown that all these men visited her about the time the conception took place, then the case is postponed until the birth of the child, & the case goes against the man to whom it bears resemblance."

Bearing these principles in mind it will be seen that it is for the plaintiff first to prove the seduction & pregnancy of the girl by the defendant. Under Native law & custom, in most tribes, a man is liable in damages for causing the pregnancy of a woman even if she is not a virgin. In any case if the defendant alleges that a girl was not a virgin at the time he had connection with her, it is for him to establish that fact by evidence.

As was pointed out in Mbozeti vs Mbiciti 1 N.A.C. 26 " it is

a well established fact that the only person who can positively state whether pregnancy ensues or not from an act of cohabitation is the woman. . . . . It is a most unusual thing, as has been pointed out in this Court, for an unmarried girl to deny the paternity of her child, such an act being considered as not only disgraceful to herself but to her offspring. Natives consequently attach great importance to a mother's evidence in that view the Court agrees" (Ngqontsholo vs Sodo & ano. (1941) N.A.C. (C&O) 81 Damane vs Mhlahlati (1945) N.A.C. (C&O) 28.

REPORT

In regard to corroboration of the girl's evidence, in Dalisile vs Dungula & ano. 1940 N.A.C. (C&O) 83, the Court said: "The girl made no report to her people and her condition was not discovered till she had given birth to a still-born child in the veld. There is no corroboration of the girl's version of the affair... It was pointed out in Tsoali & ano vs Lebenya (1940) N.A.C. (C&O) 22 failure to report timeously is in Native cases a most detrimental feature in a case for seduction. The basic principle is the same among all tribes. The rule is

METSHA.

that once a youth or man is shown the intimate with a girl as metsha or Sitsurse, the condition of the girl is ascribed to him until he can prove his innocence. But to enable him to do so report must be made forthwith on the seduction, Sitsurse it is held that the girl is screening someone else, for Natives recognise that a girl may have more than one lover or metsha, though this is not usual. Our courts do not go quite so far as the Native courts, but the underlying principles are the same & we require corroboration of the girl's story in some material aspect of the case. (See Poggenpoel vs Harris (1938) C.P.D. 90; Kleinwort vs Kleinwort (1927) A.D. 124. As to the meaning of corroboration it was stated in Mackay vs Ballot (1921) T.P.D 432 "Corroboration means evidence additional to that of the woman which in some degree is consistent with her story & inconsistent with the innocence of the defendant" By ~~custom~~ custom her delay or rather failure to report is prejudicial to the defendant & it cannot be held against him.

Delay

As to what may be regarded as amounting to delay

in reporting no hard and fast rule can be drawn. Each case will depend upon its circumstances. Thus in Thai vs Cakata (1943) N.A.C. (C&O) 23 it was held that a delay of fourteen days in reporting a pregnancy was not unreasonable, but in Toodi vs Letsey. (1940) N.A.C. (C&O) 22 where a report was only made three months after the birth of the child was viewed adversely, though it was indicated that this principle must not be extended to the point of denying "an injured litigant the right to prosecute his case" unjustifiably.

In Tabode vs Rasmeni & ano. 1939 N.A.C. (C&O) 96 it was held that where defendant denies ever having visited plaintiff's kraal and his denial is proved to be false, this can be regarded as corroboration of the girl's statement that he is responsible for her condition. In this case defendant had admitted netsho-ing with the girl in question and as the Court held that pregnancy could have been caused by "netshoing" it held further that the onus rested upon him to show that he could not have been the father of the child or that the woman was not worthy of belief.

Pretshoing Pregnancy

In regard the question of pregnancy arising out of ukuthetshe, the matter was discussed in Maroon vs Blatfeis & ano. (1938) N.A.C. (C&O) 96 in which it was explained that "under the custom of ukuthetshe full intercourse does not, as a rule, take place, but semen is emitted between the thighs of the girl in close proximity to the vagina, it is therefore possible that some of the spermatozoa may find its way into the womb & so cause pregnancy. That conception may take place as a result of incomplete penetration is clear from Bolwar vs Kabeni 1933 N.A.C. (C&O) 43.

The rule of law is that in paternity cases, where defendant denies the intercourse, his oath is to be preferred to that of the woman unless there is evidence aliunde to corroborate her. This does not mean that defendant can deny intercourse in his plea and when he finds that plaintiff has no evidence beside her own as to the actual act of seduction, ask for judgment in his favour. His denial of the seduction must be on oath & the other side must be given an opportunity

to cross-examine him. (Makuta vs Kihle (1936) N.A.C. (C&O) 14.

Right to sue. i. By a long series of decisions the Court has held that a Native woman of the Cape South-Eastern Bantu (Xhosa-speaking) may recover in her own right under the Bantu law of the Union damages for seduction. (See Bosi vs Xgwa, 4 N.A.C. 310 Cebria vs Gwelta 4 N.A.C. 330; Nwayo vs Gwijo, 1 N.A.C. 235; Yako vs Bayi (1941) N.A.C. (C&O) 72; Qobo vs Nwayo (1945) N.A.C. (C&O) 45.

ii. In Nadlwana vs Lubanga 3 N.A.C. 253 it was held according to Native custom when a sister is allotted by her father as guardian to one of her brothers who subsequently lives with him at his kraal, such a brother has a right of action to recover damages in respect of the seduction of such sister, thus in view of the brother's interest in her sister's prospective lobolo.

iii. In Sotolela vs Ganta it was held, following Tshetsha vs Mabolontsya 1 N.A.C. iii & Dayimani vs Rebe 3 N.A.C. 248 that "when a girl is taken by a wedding party in marriage to a man it is discovered after the lobolo has been paid to the wedding party has lapse that she was pregnant when given in marriage, the husband has a right of action against the seducer precisely as if the pregnancy had been caused after marriage, but when a man concludes a marriage at the time knowing the girl is pregnant, he has no such right of action". (Mtshe vs Mbojwa and others 4 N.A.C. 328). Otherwise it is the father or guardian of the girl who ~~[illegible]~~ must sue any one who seduces her before her marriage.

iv. In Mkhwi vs Dandi 1 N.A.C. 69 the question was discussed as to whether a sister can be sued by the guardian of his expected wife if he makes her pregnant before marriage and he himself dies before marriage. On the question the Native assessors stated the law as follows:—

(1) If the intended wife was made pregnant by the man to whom she was married such a case would be treated as if the marriage had actually taken place and one beast would be deducted from the lobolo paid by such sister for such pregnancy when it was returned to the deceased man's family

(2) If the deceased man had not been notified of the pregnancy, this would be a strong factor in determining whether the pregnancy had been caused by him or not.

In Renaye vs Nenbo, 4 N.A.C. the native assessors informed the Court that "if a man is paying lobolo for a girl, whenever her pregnancy it is regarded as though a marriage had taken place & the girl having repudiated her engagement, her father is not entitled to any fine, but one beast may be deducted for the pregnancy of his daughter i.e. when returning the lobolo to the rejected suitor". They further stated that had a marriage taken place the father of the girl would have been entitled to the increase of the lobolo cattle, but there having been no marriage, the increase are the property of the jilted suitor.

In Dlebekili vs Klaas & another (1938) N.A.C. (C&O) 46 the Court held in an action for damages for seduction & pregnancy against the prospective husband who had paid for head of cattle on account of lobolo, which charge was denied by the defendant, that the voluntary return of the engagement cattle by the prospective bride's people was prejudicial to plaintiff's case as raising a strong presumption that the prospective husband was not the seducer. The Court went to say that the defendant had no possible motive for denying that he was responsible for the pregnancy if in fact he was. "He was engaged to the girl, had already paid for head of cattle & when of her people claimed the cattle as damages, all he had to do was to proceed with the marriage when the damages would merge in lobolo and he would suffer no loss."

Pregnancy of Idikazi

An idikazi is a woman living with her own people who has been married or an unmarried woman who has had a child i.e. a woman who is not a virgin. The question has been raised as to whether any damages are payable in the case of the pregnancy of such a woman.

1. Among the Ecaleka, Ngqika & Thembu Tribes of the Cape, a man may demand damages for two pregnancies of his unmarried daughter but not three & the damages for the second

pregnancy will be anything up to three head of cattle in the discretion of the Court according to the case exercised by the father over his daughter (Magunga vs Baleni & ano. 3 N.A.C. 259; Daniel vs Socinsi 4 N.A.C. 320; Nkohla vs Rekana 4 N.A.C. 321; Ndamoholo vs Tongo (1941) N.A.C. (C&O) 75); but no damages are demandable for mere intercourse not followed by pregnancy in respect of a woman who has previously had a child by another man (Daniel vs Socinsi, 4 N.A.C. 320) Among the Fingo two head of cattle are usually paid for a second pregnancy (Simayoko vs Magungo (1935) N.A.C. (C&O) 1.

Among the Tembu a different rule obtains in that no fine is paid for a second pregnancy of caused by the same man unless she is a chief's daughter (Gedlele vs Matshamba 1 N.A.C. 263; Ngcabalaza vs Nyovane (1937) N.A.C. (C&O) 96.

Among the Pondo the rule was stated in Cuyana vs Jwengu 3 N.A.C. 259 as follows: "Under Pondo custom a man may demand fines for the pregnancies of his unmarried daughter, no matter how many they are, and the fine to be paid in such case is the usual fine (four head of cattle) though there are cases in which by reason of the offender's poverty he pays less" A similar statement was made in the case of Swelendawo vs Nyakeni 1 N.A.C. 267, viz "Under Pondo custom a father may demand damages for the pregnancy of his daughter up to the last child, if the seducer refuses to pay he may sue him.".

Among the Natives of East Griqualand i.e. Basuto, Mfengu, Bhaca, Xesibe, Mtetwa & Pondomise, the Courts have awarded damages for a second pregnancy of an unmarried Native woman. It is not usual for the Court to award the same number for a second pregnancy as for a first, on the ground that this may lead to greater immorality (Mtwapentsi vs Mazeka, Seymour p. 171.

In Mpumuza & ano vs Mkhaleba (1932) N.A.C. (C&O) 37 the Court said "The Native assessors state that in the Bhaca tribe the measure of damages in seduction cases accompanied by pregnancy is four cattle, excluding the ngutu beast. Other is not varied even if the girl has been previously seduced. (See also Zwelendaba vs Sifonia (1929) N.A.C. (unreported)

In Ngcobo vs Mkhaleli 4 N.A.C. 316 the Court held that an award of three head of cattle as damages for the second pregnancy of an unmarried Xhosa girl was not excessive.
In Mtolo vs Matshitshi Seymour p. 89 the Court said that among the Basuto a fine was recoverable for a second pregnancy of an unmarried woman, see Mtwapoati vs Magebe supra it was held that the fine recoverable for a second pregnancy need not be as large as that imposed on the first occasion (i.e. six head of cattle) Mbo vs Rambele (1940) N.A.C. (C&O) 149.

Intercourse with a Widow

As far as intercourse with a widow is concerned a distinction must be drawn between those tribes which practise the ukungena custom & those which do not.
Among tribes not practising the ukungena custom a widow is expected by means of secret intercourse with certain men, to raise up seed to her deceased husband & accordingly damages are not recoverable for intercourse with her nor for any pregnancies that may result therefrom. Thus
In Pene vs Wagu 4 N.A.C. 372 the Court said "It was laid down in most emphatic terms in Jana vs Veldtman 1 N.A.C. 107 that damages are not recoverable for intercourse with a widow. Jana's case was ~~last~~ held in 1906 and the Court there remarked "It is a well known maxim of Native law that damages are not recoverable for intercourse with a widow even though it results in pregnancy. It is marvellous, if such a right of action exists that there has not previously been a single case of this kind before the Court since its establishment in 1906. The maxim of Native law obtains among the Fingoes, Aggiba & those Fingo tribes who do not practise the ukungena custom are this respect follow those customs.

In East Griqualand & Pondoland the majority of the tribes practise the ukungena custom & there a different rule obtains

regarding the intercourse with a widow.

In Pondoland the position was stated by the native assessors in the case of Sheleni v Mkwayi (N.N.C. 240 as follows:- "If a widow remains at the kraal of her late husband & there has children, there is no fine for cohabitation with her. If she returns to her father's kraal she is no longer a widow. She is now a daughter & fine is paid for cohabitation with her. As stated by an Pondo assessor in Mangwana v Nombangeni (N.N.C. 114 :- "The object of the ukungena custom is to prevent a widow from having children by outsiders so that the offspring shall have the same blood as the deceased husband. To mark an ukungena union the man must be approved by the relations & an animal is slaughtered to cleanse the widow. The man then has all the rights of a husband and if he finds another man committing adultery with the woman he has a right of action against him for damages" (See also Ntungana v Sangulukuhlo & ors. 4 N.N.C. 22 in which Mangwana's case was quoted with approval).

It was stated in Mdoda v Mayi 3 N.A.C. 387 :- "According to Xesibe custom a man put into a hut on seed raised (ngena husband) is entitled to sue the adulterer. Damages paid must go to the deceased husband's estate. The seed-raiser cannot take the cattle to his own kraal. The same opinion was expressed with respect to the custom of the Pondo, Bacas, Xesibe & Mfengu. Thus among tribes practising ukungena the ngena husband has a right of action against the adulterer. But he is not personally entitled to any damages received which must go to the estate of the deceased husband. This shows that among these tribes liability depends upon whether the widow has been ngena-ed or not. When a woman is not ngenaed there is no action for adultery when she takes an outside man as "seed raiser" to her deceased husband. When ngenaed by the rightful & approved man, she has the same privileges, status & responsibilities as a wife (Mkhudi & ors. v Jeebo, Seymour p. 173).
The fine for sexual intercourse with an ngenaed widow is the same that obtained in respect of a wife.

Scale of Damages.

The scale of damages levied for seduction varies with different tribes

Among the Sotho (Bathlaro section) the damages for seduction without pregnancy is one beast, but if the girl became pregnant as a result of the seduction, the fine is six head of cattle (Mbeo vs Ramabele (1940) N.A.C. (C&O) 149; Ecwabe vs Mgelengwa & ano (1944) N.A.C. (C&O) 87

Among the Bakwena & Bahlakwana (Sotho) the damages for seduction either or without pregnancy is six head of cattle, the reason being that the bohali of a girl who is not a virgin is reduced by six head of cattle (Ecwabe vs Mgelengwa & ano. (1944) N.A.C. (C&O) 87.

Among the Thembu "when a girl has been seduced & pregnancy follows a fine of five head of cattle as horse is payable. This is the original Thembu custom" the horse being regarded as having been paid for the elopement & being called "the feet of the young man" (Qunta vs Tatoyi (1937) N.A.C. (C&O) 157 In Kesa vs Ndaba & ano (1935) N.A.C. (C&O) 64 it was stated that six head of cattle are payable under Thembu custom for seduction whether or not followed by pregnancy.

Among the Baca the damages awarded for seduction accompanied by pregnancy is five head of cattle excluding the Nguba beast (Nofumenu & ano. vs Nokalaba (1932) N.A.C. (C&O) 37.

Among the Ecaleka, Ngqika & Ngqika tribes of Butterworth District the damages for seduction unaccompanied by pregnancy is one beast (Maggobi vs Makohwana (1933) N.A.C. (C&O) 3; Zodongwana vs Runeli (N.A.C. 54) & if seduction results in pregnancy the damages are assessed at five head of cattle (Totie vs Dyasi (1931) N.A.C. (C&O) 51; Lobisini vs Ngakumbi, (1949) N.A.C. (C&O) 1; see also Kwatisha vs Sihlukwa & ano (1931) N.A.C. (C&O) 1; Solomon vs Saba, not reported, a Kingwilliamstown case.

Among the Pondomise & Xesibe tribes damages for seduction accompanied by pregnancy are fixed at five head of cattle (Nongwana vs Mkwatisi & ano (1942) N.A.C. (C&O) 21; Nkqantsiba vs Zodo & ano. (1944) N.A.C. (C&O) 81.

Among the Tembu it would appear that there is no fine for a second pregnancy as was pointed out in Zidlele vs Mntshamba 1 N.A.C. 263 and in Ngcobolazo vs Nyovane (1937) N.A.C.(C&O) 96. As was stated by Chief Velelo Mhlontlo in Ngcobolazo's case: "When a virgin is seduced without pregnancy one beast is paid as called ~~ushewu~~ ushewula or ngutu. If the ushewula has been paid and thereafter it be found that the girl is pregnant, he has to pay an additional five head of cattle. According to custom there is no fine if the same man renders the girl pregnant a second time..... If the girl, having had a child, is rendered pregnant by someone other the man who caused her first pregnancy, three head will be paid as a fine. No further fines are paid for further pregnancies, those children belong to the girl's father." This statement of the law was corroborated by Mzenzo Matoti who added the further point that "if the father discovers the pregnancy first (not the seduction first & then the pregnancy) the ushewula beast is not paid, but only the five head of cattle".

Among the Pondo in Eastern Pondoland there is no fine for seduction unaccompanied by pregnancy when a bride fee is paid it consists of one beast only (Magadule vs Mdindwa 4 N.A.C. 154 and Mdlekendleke 4 N.A.C. 154.

Under Pondo custom damages for the seduction of a virgin with resultant pregnancy is fixed at five head of cattle (Kolatile vs Mhlanelwa & ano. 4 NAC. 322) In Tsewu vs Ngakala (1940) NAC(C&O) 72 the Court dealing with Pondo law said "The basis of an action against a seducer for damages is the impairment of the girl's value in the marriage market & the quantum of damages in normal cases is fixed at five head of cattle, where seduction has been followed by pregnancy, no further claim is competent against a defendant who has paid these damages, to cover the additional loss the father or guardian has sustained on having to return engagement cattle & then unsuccessfully the person to whom the girl had been engaged, which engagement had been terminated by reason of the girl's seduction".

Damages for Royalty

Among the South-Eastern Bantu (Xhosa-speaking) a chief of fairly high rank is entitled to claim higher damages than the scale laid down for commoners for the seduction or pregnancy of his daughters. The question of damages, however, is one very largely in the discretion of the Native Commissioner. Cadets of the major ruling houses say Ezaleka, Tembu & Bhaca are not recognised by the Courts as entitled to special damages, much less to those of minor tribes (Dalaiso v Dungula & ano. (1940) N.A.C. (C&O) 83; Rewoti v Mveyethi & ano. 4 N.A.C. 316; Ngwiliso v Ntshwelelo, 3 N.A.C. 12 Ngina v Ntlapeko & ano. 3 N.A.C. 12.

Payment by Mistake

When a fine for pregnancy, whether of a wife or a virgin, is paid in error of fact on the part of the seducer or by misrepresentation on the part of the husband of the wife or guardian of the girl, the seducer or adulterer as the case ~~may~~ might be, is entitled to claim the excess damages paid i.e. the pregnancy damages. This point was fully discussed in Sibotu v Mondli (1940) N.A.C. (C&O) 174 (q.v.)

Death of Seduced Girl.

Among the South-Eastern Bantu, in Native law, if a girl for whom a man is paying lobola is discovered to be pregnant by him a fine is demanded in addition to the lobola, and the marriage is ~~both~~ broken off by either of the parties before the death of the girl, her father or guardian is held to be entitled to demand a fine for the pregnancy of the girl and the fact that she dies in childbirth does not invalidate the claim the father or guardian has, according to Native law, to a fine" (Mfengisi v Mgukuso (N.A.C. 12).

In Valeshiya v Ntoa (1932) N.A.C. (C&O) 32 the Court held that under Basuto law engagement cattle are not returnable where the girl dies in childbirth following her seduction by the suitor in view of the fact that her death was directly attributable to him in causing her pregnancy.

Death of Seducer.

The question may be asked as to the extent to which the plaintiff's right of action in seduction was affected by the death of the seducer (the defendant). Among the Cape South-Eastern Bantu the maxim "actio personalis moritur cum persona" (a personal action dies with the person) has only got partial application. Where the seduction is proved either by the admission of the broadhead or by the customary report of the seduction, the broadhead is liable even after the death of the seducer even if he left no property (vide Kiva vs Meji, 5 N.A.C. 85; Mayekiso vs Sipeba & ano. 3 N.A.C. 247. In Sonjica vs Simakade 4 N.A.C. 326, according to evidence the girl in question did not make known the fact of her ~~seduction~~ pregnancy to her people until after the death of her seducer. The Native assessors informed the Court that as the girl had had ample time to inform her people of her condition & enable them to put in a claim & had failed to do so, she had "thrown away her case". Consequently no action lay against the deceased young man.

Delay in bringing action.

Although prescription as such is ordinarily not known or recognised in Native custom, in many cases the Native assessors have stated that delay in bringing seduction & other actions for which no satisfactory explanation is offered, militates, in most cases, very strongly against a plaintiff (Ndeji vs Enomond (1941) N.A.C. (C&O) 36. The same point was raised in the case of Mapheleba vs Ewula (1947) N.A.C. (C&O) 21 in which the activation of the Native assessors was demonstrated by the decision in Prosli & ano vs Lebenya (1940) N.A.C. (C&O) 22 and they were asked whether failure to report recovery of pregnancy by the seducer was a bar to recovery of damages by the girl's father if so whether the same rule applied in adultery cases. They replied "Our Basuto custom that if the report of the pregnancy is not made by the seducer, the father cannot recover damages. Even if he admits the intercourse but denies the fatherhood, he would not be liable. The same rule applies with greater force in adultery cases". This principle which concurred with the expressed in Prosli's case was accepted by the Court.

Delay in bringing action

In Vusani v Fetugi 3 NRC. 245 the Tembu Native Assessor stated "According to Native custom damages for seduction of pregnancy are demanded during the minority of the child. If the child grows up before damages are claimed, he or she finally becomes the property of his or her mother's family. No damages can be claimed after the child has grown". The Court accepted this view.
It has been held, however, that a delay of fourteen days after the plaintiff became aware of the pregnancy of his daughter was not an unreasonable delay (Thoi v Cekato (1943) NPC (Ccs) 23.

Among the Basotho the legal position is laid down in Law 13 of the Laws of Basutoland. According to this law
(a) any person who should seduce or abduct any unmarried woman shall be liable to a fine not exceeding one head of cattle or the equivalent. (b) If the same young man seduce or abduct the same unmarried woman for the second time, he shall be obliged to marry her by payment of bohali or in church as the parents of the young persons will agree. If the parents of the young man refuse, for any reason, to arrange the marriage with the parents of the unmarried woman, a fine shall be paid as ordered by the Court. (c) If the young man seduces or abducts the same unmarried woman for the third time, the fine shall be increased upon the offender, if his parents persist in refusing for any reason to arrange the marriage with the parents of the unmarried woman.

Death of seduced girl

(d) It is not lawful for any person who has seduced a girl or woman to be fined ten head of cattle if the girl or woman dies from labour (in childbirth). Before the girl is delivered of a child, judgment is not to be given. (e) If an abducted girl dies because of the abduction, the fine payable is one not exceeding ten head of cattle. If the abducted person survives an enquiry the fine is in the discretion of the Court, this fine being in addition to the six head of cattle

LAW TO BE APPLIED in Free State

The question has been raised as to what law should be followed in dealing with native cases in the Free State, because although the main tribes endemic in the Free State are the Basuto & the Tswana, there are many other tribes resident on the Free State farms. The law applicable in all cases is the law primarily of the tribe occupying a Native Reserve to which that area the laws of the defendants' tribe is to be applied.

In the Case of Motlaung v Motloenang (1929) N.A.C.(C&O) 127 the Court accepted the opinion of the Native Assessors regarding damages payable in the Free State for seduction & pregnancy. The limits there given will not be exceeded within the areas mentioned. It was stated in Shlemini v Entebe (1944) N.A.C.(C&O) 60 "it would be inequitable & confusing to set up a higher scale for Natives living elsewhere in the Free State; hence those scales which are reasonable, must be regarded as the maximum.

In Motlaung's case the following questions were put to the assessors

1. What fine is payable for deflowering a Native female in the Orange Free State, if there be no pregnancy?
2. If there be pregnancy?
3. Is there any fine for intercourse with a girl who has already been deflowered by another man? (a) if there is no pregnancy (b) if there is pregnancy? (c) what is fine payable if the girl has a second or more children.
4. Is a father liable for the delict or wrongdoings of his son (a) when he resides with the father? (b) when he lives at another kraal or is away at work.

As far as the Tswana at Phokeng were concerned the Assessors replied:

① (a) On the first point where a man is found sleeping with a girl, that man has to pay two head of cattle. I speak of an untouched girl
(b) If she is rendered pregnant, then four head are paid
② (a) Where a girl has been previously violated, if a man is found sleeping with her, he must pay two head. Nothing is demanded of the man found for a third time.
(b) If the girl is rendered pregnant, only two head of cattle are paid
③ No fine is paid if she is made pregnant on a third occasion
④ A father is responsible for his son's wrongs if he is not married if he is living with his father or is away at work. If he is away at work people must consult his father & say the son has done wrong. The son has to be called to answer the case. He appears before the Bapitsa (Court) father & son. A father ceases to be liable when his son marries. The son must be taken to Court.

Kraalhead liability.

As far as the Bamotha of Welzee's Block are concerned the Assessors stated:

1(a) A fine is imposed of three head of cattle or £9 on the father of the man who sleeps with a girl even if she is not rendered pregnant
(b) If pregnant, only three head are still paid

2. These same fines are paid if the girl is not untach.
3. No fines are paid for the third offence even if she is rendered pregnant.

Kraalhead liability

4. The father's liability for the son's wrong doing stops after bohali has been paid for the son. It does not matter where the son is, the father is responsible.

Among the Tswana in British Bechuanaland. The fine for seduction is six head of cattle or their equivalent, £5 each (Kodesing v Seakgela 1945 N.A.C. (C&O) 51.

Among the Pedi & cognate tribes seduction is not regarded as a crime;
(a) it gives rise to a civil action by the parents of the girl against the seducer for damages which in most cases are not supposed to exceed three head of cattle. Nowadays the usual penalty is a cow & calf paid on the birth of the child.
(b) If a woman bears a second or subsequent child, no claim can be made against the man; otherwise, according to the Pedi, avaricious parents used prostitute their daughters to encourage them to lead immoral lives, for besides receiving payment for each child, they used remain the guardians of these (illegitimate) children, through whom if daughters, profit could accrue, either by their also being prostituted or by being given in marriage (Harries, p. 107.).

(a) Among the Bakwena the seduction of an unmarried woman is an actionable wrong & damages are assessed at two head of cattle.
(b) The seducer is not entitled to the woman or her children by him unless he has paid the seruto sometimes spoken of as bogadi, the fine then forming part of the latter, which in these cases is often fixed high, the only check on the transaction being the smaller bogadi the girl would obtain if the seducer refused to marry her & a husband had to be obtained for her afterwards (Per J. L. Lestrade, Evidence Ethnological).

Among the BaVenda. the usual fine for seduction of an unmarried girl goes to the girl's guardian when she is not betrothed (Ch.S.P. Instructs).

Among the Tonga. the seduction of an unmarried leads to no consequences at all unless the girl becomes pregnant. If the girl does become pregnant, then the man is required to marry her. If the girl does not consent to the marriage, the man is free; but if the man does want to marry the girl the relatives want him to do so he will have to pay as much as £70 or so. "He has spoilt her cows. His own relatives will be arrested & forced to pay. They are responsible for him & will scold him severely (Junod pp. 196, 197, 244).

Among the Swazi seduction was not regarded as an actionable wrong unless it resulted in pregnancy. There was no rule against sexual intercourse before marriage provided it was confined to ukuyumela (cf. ukuhlobonga & ukumetsha) & so long as pregnancy did not result no harm was done. Although the Swazi maintain that a young woman who comes into married life with the hymen already penetrated (except at the instance of the husband himself) is not ostracised as one whose child a virgin, apparently in the old days she was not fined nor was the man who caused the rupture. Today, however, such claims are made. There appears to be no fixed scale for the whole territory. In one chiefdom according to one informant the fine for seduction is now two head of cattle for the daughter of a commoner, two for the daughter of an umfenetkosi (prince) & ten for the daughter of the King. The fine is demanded whether the man marries the girl or not & is called umvimba. Other informants put the fine for the daughter of a prince at 10, & that for the daughter of a King at 20 head of cattle. All are agreed this matter of fines for seduction is an innovation in Swaziland, probably borrowed from Zululand (per Warwick pp. 89, 90).

In Moothoana vs Sibeko (1942) N.A.S. (T&N) 17 where the respondent was a Swazi the Court held that the amount of damages payable for seduction followed

by pregnancy, in the Transvaal or two head of cattle, where the case is tried according to Native law".

Among the Matebele in Southern Rhodesia a father has a claim for damages for the seduction of his daughter, among further allow the seducer to pay lobolo for the child, if any. The father of the girl has the right to decide whether to accept lobolo or to refuse it & the natural father must bow to his decision (1928 Nada p. 9. per Jackson.)

Among the Mashona of Southern Rhodesia if a man seduces a spinster, & neither able nor willing to marry her he must return her forthwith to her father & pay him a cow or more depending upon the gravity of the circumstances, her father's worthfulness & the financial status of the seducer. Should pregnancy have resulted, the seducer must pay the minimum of a cow in calf (1945, Nada p. 55).

The father of a runaway girl has a right to damages from the seducer and to an order of court for the restoration of his daughter. Nor can one find in Native law a rule that damages for seduction were claimable only in respect of a virgin. However where a betrothed girl was seduced and it was found that the girl in question had numerous lovers, the father of the girl himself had to pay damages to her prospective husband. It is possible that the principle underlying this rule might be extended to modern cases where the concubine has an criminal record.

The damages for simple seduction was one heifer. If pregnancy followed a further beast was payable. In cases of seduction followed by pregnancy the father was entitled to refuse to accept damages and to take instead "the child added to the family". If he accepted the damages, the putative father could later claim the custody of the child born as a result of such pregnancy. (Ballock, pp. 341-343).

Where a man a girl according to Native Custom & it turns out that the girl had been seduced by another man before marriage, before the marriage was arranged, the husband may report the matter to his father-in-law who must claim damages from the seducer, ~~but~~ one or two head of cattle.

such damage must be paid over to the husband. If the father-in-law does not claim the damages, he must nevertheless pay damages himself to the husband. The husband has no direct ~~ago~~ claim for damages against the seducer. (Wade 1931, p. 69; Bullock pp. 319, 320).