

## INJURIES TO PROPERTY

In regard to Native Law among the South-Eastern Cape Bantu all kinds of theft come under the head of civil cases. Seizing property by force or the plea of retribution, taking the law into one's own hands or on any other pretence whatever, did not come under the head of stealing. Property thus seized had to be restored or compensation given for its value. In all cases of theft of livestock the law allowed ten to one, although the full amount of the fine was seldom strictly enforced. The stealing of livestock is regarded by the Xhosas-speaking tribes as a very serious heinous wrong. At the present day Native law is applied, but where it does not afford a remedy the principles of the Common Law are applied (MacLean, p. 67).

### Grass fires

As far as responsibility of persons starting grass fires is concerned the law among the Xhosas-speaking tribes was stated in Daniel & another vs Jack 2 NAT. 29. where the Court said: - "It is in accordance with Native custom that a person whose property has been injured by a grass fire should never damage from the person who set the fire alight." In Daze vs Ngobholo, 2 NAT. 101 the Native amanuensis stated that "according to Xhosa custom, if a person accidentally set fire to grass, say in smoking, and he does not see to it & that fire does damage, he is not responsible; but if a person in the fire of remonstrance, fires the grass, he is liable for damage done by that fire." It is clear from this that no action lies for damages where a fire was started accidentally; but where negligence or intention is present an action does lie for damages by fire.

In Natal according to section 135 of the Code of Native Law "when by reason of negligence on the part of any person in starting a fire or failing properly to control a grass fire, loss is sustained by any other person, an action for damages lies against the person responsible for such fire".