C3.53

SPOLIATION

Under Native law no person is allowed to take the law into his hands. If property is seized, it must be restored. It is usual however in the Transkei to institute all spoliatory actions under the Common law.

In Qumbu vs Mfeta (1934) N.A.C. (C&O) 29 it was held that the mandament of spoliation applies to cases where a person has been deprived of the possession of property by force, violence or stealth, but as was pointed out in Anderson vs Anderson (1919) E.D.C. it is not necessary to prove force or secrecy but merely that the applicant's possession had been illegally interfered with & that the respondent must be ordered to restore the position quo ante by returning the property to the applicant.

No valid defence to the spoliatory action exists except

1. To show that the applicant was not in peaceful & any possession or that the applicant himself had spoliated from the respondent.
2. That the disturbance, if any, of possession by plaintiff was not illegal i.e. forcible, fraudulent or clandestine
3. ownership or a claim to ownership cannot be opposed to a spoliatory action.

The essence of the action is Spoliatus ante omnia restituendus est — the thing spoliated must be returned before all else. (Nkoti vs Nkomo (1929) N.A.C. (C&O) 15 P.H.R. overruled; Ncomoza vs Njandini (1944) N.A.C. (C&O) 48.

~~[illegible]~~

cf Seduction damages

NQUTU BEAST. The old native custom which allowed the women of a kraal, a daughter of which had been deflowered, to forcibly seize & kill one of the seducer's cattle, can no longer be recognised, presumably on the ground that it is opposed to public policy. Of course it cannot be taken by force or surreptitiously, on the same ground that no other legal right may be so enforced. If resistance is made the remedy must be by appeal to the legal tribunal Mehlomane vs Nkwatsha 1 N.A.C. 37; Mlotya vs Mngaza 1 N.A.C. 182 Mbulungwana vs Mbulungwana (1929) N.A.C. (C&O) 8.