

DAMAGE DONE BY ANIMALS

There are various ways in which damage may be done by animals. Such damage usually results in some one or other suffering loss. The question consequently arises as to circumstances under which an action for damages will lie at the instance of a person who has suffered loss as the result of the damage done by animals.

(i) Damage may be done by an animal as the result of an otherwise tame or domesticated animal acting in a manner contrary to what is generally associated with animals of that class. If this happens the owner of the animal is held liable for the damages to anyone who has suffered loss as the result of such action. Thus in N.Exarisa vs Maggoza, 1936 N.A.C.(C&O), A's colt was gored by B's ox and the colt died as a result of the injuries suffered. The ox was known by the defendant B to have vicious propensities. It was held that both under Native Law and under the common law "in the case of harm done by a domesticated animal known to have vicious propensities, culpa on the part of its owner will be presumed, but in all other cases the onus of establishing culpa rests on the plaintiff who alleges it".

Under the common law this right to sue for damage done by an animal acting contrary to its nature is based on an action known as the "actio de pauperie" derived from Roman Law. The liability for damages devolves upon the owner of the animal irrespective of any culpa (negligence) on his part, but the liability of the owner is not an absolute liability. In other words there are certain circumstances in which the owner will not be held liable for any damage done by the animal. (i) The plaintiff in order to succeed in this action must prove that the animal acted contrary to its nature from inward excitement or vice. The onus the plaintiff may discharge, e.g. by proving that he was attacked by the animal without any apparent cause. Mere proof that he was injured by contact with the animal is not sufficient. (ii) The plaintiff will not succeed if he is himself responsible for the way in which the animal acted, e.g. if he provoked the animal in some other way by "substantial negligence or imprudence contributed to his own injury. (iii) Similarly the plaintiff will not

succeed if some third party, not the owner, provoked the animal. In that event the plaintiff must sue the third party concerned and not the owner. (iv) The plaintiff will not succeed if the injury he sustained was due to pure accident, i.e. if no one was to blame for the way in which the animal acted. (v) The plaintiff must have been lawfully at the place where he was injured or alternatively that he lawful ~~business~~ business where he was injured, e.g. a trespasser on private property would not be protected under the actio de pauperie.

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The limitations also apply to injury caused by one animal to another. Thus if two animals engage in a fight and the one that started the fight is killed, no action will lie against the owner of the other animal. So no action will lie if the animal was injured at a place where it had no right to be, its owner being regarded as negligent in having allowed it to stray.

TRESPASS OF STOCK

2. A second way in which animals may do damage is by grazing where they have no right to graze. Under the Roman Law compensation could be claimed for damage done in this way under the action de pastu. Under the modern common law this action has been superseded by the Pound Acts of the various Provinces under which the owner of an animal which trespasses on the property of another is liable to pay for any damage done in the course of its trespass.

This action of trespass by stock is well known under Native Law and Custom. As a rule when stock has trespassed in this way trespassing stock is taken to its owner ~~or~~ or the owner is notified about the trespass. The owner of the stock is then called upon to make an estimate of the damage done and to ~~make~~ make it good accordingly. If the owner refuses to pay the damages claimed, the person on whose property trespass has taken place may impound the stock until the damage has been paid. The damages claimable are for loss actually suffered as a result of the trespass (Mqokeli Arosi vs Belini Monyakanyaka, 1936 N.A.C.(C&O)). In the Transkei trespass by stock is governed by sec. 77 of Proclamation 387/1893 as amended by Proclamation 60/1910 which provides that "the native custom that the proprietor shall take the trespassing stock or notify the trespass to its owner when known shall continue to be in force".