C3.39

DELICTS IN NATIVE LAW

ASSAULT — REVIEW OF DAMAGES AWARDED BY NAT. COM.

"Whatever may be the view which this Court might have taken had this case come before it in the first instance, the question now before it is whether it should interfere with the finding of the Court below by reducing the amount of damages awarded. The Court, on appeal, will only interfere with the discretion of a magistrate in awarding damages if the Court considers that the amount awarded is grossly excessive or that the magistrate, in arriving at the amount, was unduly influenced by factors which should not have weighed with him (Tothill vs Foster, 1925 CPD 55). In the present case this Court is of opinion that the damages awarded are not so unreasonable or excessive as to justify it in reducing them."

Sigxamamea Ngqondi vs Griffith Gxara, 1936 N.A.C. (C+O) 82.

DELICTS IN NATIVE LAW

ASSAULT — PLEA OF SELF-DEFENCE

De Villiers on "Injuries" (p. 212) puts the law clearly when he says:—

"It is a good defence to an action of injury that the act complained of was one that was demanded by the exigencies of legitimate self-defence against aggression. . . . It may happen that a person who is attacked acts in excess of what is required by the exigencies of self-defence; if then the force used in repelling force is in unreasonable excess of what the urgency of the case demanded, such excess is in itself an act for which the person first attacked may be held at least criminally liable. When the excess is not utterly unreasonable the Courts would probably not too closely scrutinise whether the act of self-defence is exactly commensurate with that which the impending danger required; for in the first place, not only is the defence of one's self or of others a right but it may also be a duty; secondly, the very act of self-defence is usually by the nature of the case committed at a time when there is no opportunity of paying regard to the exact limits which may be held on consideration to be commensurate with the original act of aggression; which, indeed, is not at any time, as a rule, an easy matter to accomplish; and thirdly, considerable allowance must be made for the state of mental excitement which, as a rule, follows an aggression upon a person."

It is clear therefore that where there has been an excess of violence in defending oneself, criminal liability may exist but it does not follow that an action for damages will lie. Each case must be treated on its merits.

Sisi Bida vs Wilson Njomane, 1936 NAC (C&O) 93

DEFECTS IN NATIVE LAW

ASSAULT — ASSESSMENT OF DAMAGES.

"It has been frequently laid down that an Appeal Court will not interfere with the discretion of a judicial officer in assessing damages unless the award is grossly excessive or inadequate or he has violated some principle of law in arriving at the assessment":

In the case of Ramsaryana & Sifokolo vs Mcapukiso 5 N.A.C. 32 ...... where the injuries inflicted were only slightly greater than those in the present case, the Native Appeal Court reduced the Magistrate's award to £50 to £20. In that case the injured person was a male and not an elderly, defenceless female as in the present case. In the case of Quntia Ewadiso vs Mtati Poswa, 1934 N.A.C.(C&O) 40 the Native Appeal Court confirmed an award of £30 for an assault by a young man of good physique on an elderly man of slight build. The injuries inflicted, however, were somewhat more serious than in the present case. Taking all the circumstances into consideration we are not prepared to say that the award £20 is excessive".

MHLETYWA NTOZINI vs NOTSHANISI KAFULA, 1936 NAC.(C&O) 212

ASSAULT — CONTUMELIA

"Wrongs of violence to the person are twofold in their nature, that is to say, they may be such as merely inflict bodily pain and injury, in which case they are damnum injuria datum or they may be such as are accompanied by circumstances of insult or contumely, in which case they fall under the heading of injuria proper. Under the later Roman Law the remedy for the latter wrong was the Actio injuriarum and for the former an equitable action under the Lex Aquilia. All cases of assault or intentional violence to the person fall under the class of injuria proper, whilst personal injury arising out of negligence or other unintentional violence were included under damnum injuria data. With us all distinctions as to the forms of action have become obsolete, the difference between the two forms of wrong being merely of importance with reference to the measure of damage to be applied in each case (Maasdorp, Vol. IV. 2nd Edit. p. 22). Every deliberate assault nearly always involves contumelia.

It has already been held that the assault was unprovoked but

even if it had been proved that plaintiff swore at defendant, that would have been no justification for the assault (Blou vs Rose-Innes, 1914 T.P.D. 102; Edwards vs Stewart, 1917 T.P.D. 159.

"No authority has been produced to this Court to show that contumelia should be specially pleaded and in fact, in cases of deliberate assault the law requires the award of damages for the insult (contumelia), even though there may have been no actual bodily injury (Maasdorp, Vol. IV. 2nd Ed. p 26). The contumelia involved is one of the factors always taken into account in assessing damages for an injuria, & there seems to be no necessity specially to plead it.

MHLETYWA NTOZINI v NOTSHAMSI KAFULA, 1936, N.A.C. (C&O) 212