

INJURIES BY ANIMALS.

The law regarding injuries done by animals among the Xhosa-speaking tribes was stated in Exarisa v Maggog (1976) N.A.S. (C.S.) 36: "The Xhosa assessors were asked to state whether damages would be allowed against the owner of a cow which was admittedly vicious but had not as far as was known actually killed another animal, for the injury by such cow to other animals on the common pasture lands. The assessors stated that there was no case in which damages had ever been awarded under such circumstances. If the cow is vicious, its owner is held to cut off the tips of its horns, if he neglects to do so, he is liable for damage subsequently done by it but it is the duty of a man owning a vicious cow to cut off the tips of its horns without being asked to do so. Failure to do so, when the defendant knows of the vicious propensities of the animal is negligence.

Under the common law there are four different actions by which compensation can be claimed for damage done by an animal, viz

- (1) The actio de pauperis which is based on ownership & not on culpa (Cf. O'Callaghan v Chaffin 1927 A.D. 310; S.A.R.H. v Edwards 1935 A.D. 31)
- (2) The actio de pastu i.e. damage done by animals trespassing
- (3) An action based on the Adulesa Sedit, which prohibited the keeping of certain animals in the vicinity of a public place
- (4) An action under the Lex Aquilia.

The appropriate remedy for harm done by a domesticated animal falling outside the scope of the actio de pauperis & the actio de pastu with Lex Aquilia action. Culpa on the part of the owner or person in charge of the animal is the basis of liability. In the case of a domesticated animal known to have vicious propensities culpa will be presumed, but in all other cases the onus of establishing culpa rests on the plaintiff (McKerron, p. 177)

In Meyji v Mxamleni 2 N.A.S. 22 plaintiff sued for the delivery to him of the carcass of an animal he had killed accidentally & for which he had paid compensation to the owner. The law on this point was stated as follows by the native assessors:—

- ① The carcass belongs to the man who replaces the animal
- ② There is no exception to this rule, even if there be delay in replacing the injured animal
- ③ Nor is there any exception even if the animal paid is smaller & of less value than the one which it replaces, if the owner of the latter accepts it.
- ④ The original owner should not consume the carcass before the matter has been settled. If there is any dispute he should leave it to be consumed by the birds.

In Traluhabi v. Khatole another 4 N.A.S. 30 plaintiff sued for damages in respect of a sheep belonging which had been injured by the son of the defendant. The law was stated by the court as follows: "in Native law any person injuring the property of another is liable to pay damages to the owner of the injured property even if no actual damage is proved to have been suffered & that the object of the law in this respect is to prevent persons from carelessly or wilfully injuring the property of others."