

# Misleading Cases

## REX v HADDOCK

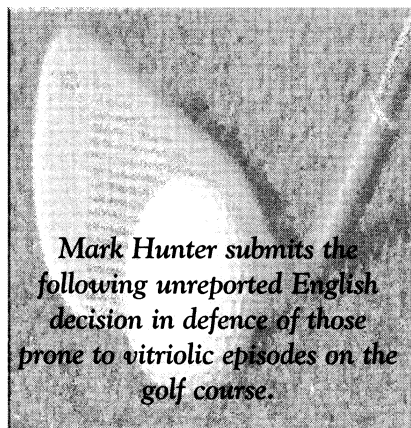
### Is a Golfer a Gentleman ?

This case, which raised an interesting point of law upon the meaning of the word 'gentleman', was concluded at the Truro Assizes to-day.

Mr. Justice Trout (giving judgment) : In this case the defendant, Mr Albert Haddock, is charged under the Profane Oaths Act, 1745, with swearing and cursing on a Cornish golf-course. The penalty under the Act is a fine of one shilling for every day-labourer, soldier or seaman, two shillings for every other person under the degree of gentleman, and five shillings for every person of or above the degree of gentleman - a remarkable but not unique example of a statute which lays down one law for the rich and another (more lenient) for the poor. The fine, it is clear, is leviable not upon the string or succession of oaths, but upon each individual malediction (see *Reg v Scott* 1863 33 L.J.M. 15). The curses charged, and admitted, in this case, are over four hundred in number, and we are asked by the prosecution to inflict a fine of one hundred pounds, assessed on the highest or gentleman's rate of five shillings a swear. The defendant admits the offences, but contends that the fine is excessive and wrongly calculated, on the curious ground that he is not a gentlemen when he is playing golf.

He has reminded us in a brilliant argument that the law takes notice, in many cases, of such exceptional circumstances as will break down the normal restraints of a civilised citizen and so powerfully inflame his passions that it would be unjust and idle to apply to his conduct the ordinary standards of the law; as, for example, where without warning or preparation he discover another man in the act of molesting his wife or family. Under such provocation the law recognises that a reasonable man ceases for the time being to be a reasonable man; and the defendant maintains that in the special circumstances of his offence a gentleman ceases to be a gentleman and should not be judged or punished as such.

Now, what were these circumstances? Broadly speaking, they were the 12th hole on the Mullion golf-course, with which most of us in this Court are familiar. At that hole the player drives (or does not



drive) over an inlet of the sea which is enclosed by cliffs some sixty feet high. The defendant has told us that he never drives over, but always into, this inlet, or Chasm, as it is locally named. A steady but not sensational player on other sections of the course, he says that before this obstacle his normal powers invariably desert him. This has preyed upon his mind; he has registered, it appears, a kind of vow, and year after year, at Easter and in August, he returns to this county determined ultimately to overcome the Chasm.

Meanwhile, unfortunately, his tenacity has become notorious. The normal procedure, it appears, if a ball is struck into the Chasm, is to strike a second, and, if that should have no better fate, to abandon the hole. The defendant tells us that in the past he has struck no fewer than six or seven balls in this way, some rolling gently over the cliff and some flying far and high out to sea. But recently, grown fatalistic, he has not thought it worthwhile to make even a second attempt, but has immediately followed his first ball into the Chasm, and there, among the the rocks, small stones and shingle, has hacked at his ball with the appropriate instrument until some lucky blow has lofted it on to the turf above, or, in the alternative, until he has broken his instruments or suffered some injury from flying fragments of rock. On one or two occasions a crowd of holiday-makers and local residents have gathered on the cliff and foreshore to watch the defendant's indomitable struggles and to hear the verbal observations which have accompanied them. On the date of the alleged offences a crowd of unprecedented dimension collected, but so intense was the defendant's concentration that he did not, he tells us,

observe their presence. His ball had more nearly traversed the gulf than ever before; it struck the opposing cliff but a few feet from the summit; and nothing but an adverse gail of exceptional ferocity prevented success. The defendant therefore, as he conducted his customary excavations among the boulders of the Chasm, was possessed, he tells us, by a more than customary fury. Oblivious of his surroundings, conscious only of the will to win, for fifteen or twenty minutes he lashed his battered ball against the stubborn cliffs, until at last it triumphantly escaped. And before, during, and after every stroke he uttered a number of imprecations of a complex character which were carefully recorded by an assiduous caddie and one or two of the spectators. The defendant says that he recalls with shame a few of the expressions which he used, that he has never used them before, and that it was a shock to him to hear them issuing from his own lips; and he says quite frankly that no gentleman would use such language.

Now, this ingenious defence, whatever may be its legal value, has at least some support in the facts of human experience. I am a golf-player myself - (laughter) - but, apart from that, evidence has been called to show the subversive effect of this exercise upon the ethical and moral systems of the mildest of mankind. Elderly gentlemen, gentle in all respects, kind to animals, beloved by children, and fond of music, are found in lonely corners of the downs, hacking at sand-pits or tussocks of grass, and muttering in a blind, ungovernable fury elaborate maledictions which could not be extracted from them by robbery or murder. Men who would face torture without a word become blasphemous at the short fourteenth. It is clear that the game of golf may well be included in that category of intolerable provocations which may legally excuse or mitigate behaviour not otherwise excusable, and that under that provocation the reasonable or gentle man may reasonably act like a lunatic or lout respectively, and should legally be judged as such.

But then I have to ask myself, what does the Act intend by the words 'of or

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## MOVEMENT AT THE STATION

### **Dalrymple and Associates**

have moved premises to:  
Unit 38/ 21 Cavenagh St  
Darwin NT 0801  
Tel: 8941 8995  
Fax: 8941 8996  
Email: dalrymple@octa4.net.au

### **Tom Stodulka**

has been appointed:  
Anti Discrimination Commissioner  
LMB 22, GPO  
Darwin NT 0801  
Tel: 8981 5190  
Fax: 8981 3812

### **Bowden Collier and Deane**

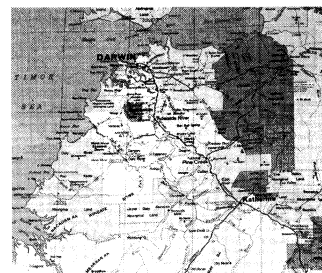
Nardine Collier has been made a  
Partner of the Alice Springs firm  
previously known as Bowden Turner  
and Deane.  
Centrepont Building  
Alice Springs NT 0871  
Tel: 8952 6566  
Fax: 8953 0876  
Email: aslaw@ozemail.com.au

### **Dirk de Zwart**

has moved from Clayton Utz to:  
David de L. Winter

Unit 20, The Rocks  
56 Marina Boulevard  
Cullen Bay NT 0800

### Heading out of town?



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above the degree of gentleman'? Does it intend a fixed social rank or a general habit of behaviour? In other words, is a gentleman legally always a gentleman, as a duke or solicitor remains unalterably a duke or solicitor? For if this is the case the defendant's argument must fail. The prosecution says that the word 'degree' is used in the sense of 'rank'. Mr Haddock argues that it is used in the sense of a university examination, and that, like the examiners, the Legislature divides the human race, for the purposes of swearing, into three vague intellectual or moral categories, of which they give certain rough but not infallible examples. Many a first-class man has 'taken a third', and many a day-labourer, according to Mr Haddock, is of so high a character that under Act he should rightly be included in the first 'degree'. There is certainly abundant judicial and a literary authority for the view that by 'gentleman' we mean a personal quality and not a social status. We have all heard of 'Nature's gentlemen'. 'Clothes do not make the gentleman,' said Lord Mildew in *Cook v The Mersey Docks and Harbour Board* (1896) 2

A.C., meaning that a true gentleman might be clad in the foul rags of an author. In the old maxim 'Manners maketh man' (see *Charles v The Great Western Railway*) there is no doubt that by 'man' is meant 'gentleman', and that 'manners' is contrasted with wealth or station. Mr. Thomas, for the prosecution, has quoted against these authorities an observation of the poet Shakespeare that 'The Prince of Darkness is a gentleman', but quotations from Shakespeare (in Court) are generally meaningless and always unsound. This one, in my judgment, is both. I am more impressed by the saying of another author (whose name I forget) that the King can make a nobleman, but he cannot make a gentleman.

I am satisfied therefore that the argument of the defendant has substance. Just as the reasonable man who discovers his consort in the embraces of the supplanter becomes for the moment a raving maniac, so the habitually gentle man may become in a bunker a violent, unmannerly oaf. In each case the ordinary sanctions of the law are suspended; and while it is right that a normally gentle person normal in

normal circumstances suffer a heavier penalty for needless imprecations than a common seaman or cattle-driver, for whom they are part of the tools of his trade, he must not be judged by the standards of the gentle in such special circumstances as provoked the defendant.

That provocation was so exceptional that I cannot think that it was contemplated by the framers of the Act; and had golf at that date been a popular exercise I have no doubt that it would have been dealt with under a special section. I find therefore that this case is not governed by the Act. I find that the defendant at the time was not in law responsible for his action or his speech and I am unable to punish him in any way. For his conduct in the Chasm he will be formally convicted of Attempted Suicide while Temporarily Insane, but he leaves the Court without a stain upon his character. (*Applause*)

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