

# IS A GOLFER A GENTLEMAN?

By

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**M**r. 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-laborer, 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 at five shillings a swear. The defendant admits the offenses, but contends that the fine is excessive and wrongly calculated, on the curious ground that he is not a gentleman 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 civilized 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 discovers another man in the act of molesting his wife or family. Under such provocation the law recognizes 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 offense 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 twelfth 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 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 offenses a crowd of unprecedented dimensions 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 gale 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 by one or two of the spectators. The defendant says that he recalls with shame a few of the expressions which he used, that he had 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 defense, whatever may be its legal value, has at least some support in the facts of human experience. I am a golf player myself 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 sandpits 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 behavior 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 above the degree of gentlemen?" Does it intend a fixed social rank or a general

habit of behavior? 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 laborer, according to Mr. Haddock, is of so high a character that under the Act he should rightly be included in the first "degree."

There is certainly abundant judicial and 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 gentleman." "Clothes do not make the gentleman," said Lord Mildeu 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 makyth man" (see *Charles v. The Great Western Railways*) 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 satisfied therefore that the argument of the defendant, has substance. 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 actions or his speech and I am unable to punish him in any way. For his conduct in the Chasm he should perhaps be formally convicted of Attempted Suicide while Temporarily Insane, but he leaves the court without a stain upon his character.