

Game, Cheat & Match

Louis Rood looks at sports in the courts.

"The important thing in life is not the victory but the contest" – Baron Pierre de Coubertin (1863-1937), founder of the modern Olympic Games.

One of the defining characteristics of the 20th century was the emergence of sport as a political, social, cultural and commercial phenomenon.

Billions of dollars are invested in international mega-events such as the Olympic Games, World Cup soccer and Formula 1 motor racing. Athletes such as Tiger Woods and David Beckham have become household names around the globe. *Fortune* magazine estimated that Chicago Bulls' basketball star Michael Jordan generated more than \$10 billion in revenue during his career. Pele and Mohammed Ali have achieved legendary status in their own lifetimes to an extent which only Presidents, Popes and Pavarottis seem able to challenge.

In South Africa, the enduring image of a beaming Nelson Mandela in his number 6 AmaBokoboko jersey, celebrating the victory of Francois Pienaar's team in the 1995 rugby World Cup, imprinted itself on the national consciousness. Like much of the rest of the modern world, South Africans are a sport-fanatic nation glued to the vivid images of athletic heroes doing battle beamed into living rooms, taverns and sports cafés.

It is thus not surprising that when sporting contestants clash in the courtrooms, the subject matter is usually money, prestige or ego.

The sporting body which has been taken on review more than any other is undoubtedly the Jockey Club of South Africa. Perhaps the most dramatic event in the colourful history of the turf in South Africa did not occur on the track at all. This was the early morning shooting on the beach, while training, of the fabulous Sea Cottage, hot favourite for the 1966 Rothmans July Handicap. Amid the outcry, Durban bookmaker Edward Chislett was arrested, charged with malicious injury to property, fraud, theft of diamonds and unlawful possession of a fire-arm. His bookmaking records were seized. Natal Tattersalls conducted an investigation and expelled Chislett as a member.

The Natal attorney-general, however, eventually withdrew the main charges and Chislett applied to have his expulsion set aside and his membership restored. The provincial ordinance governing horse-racing, the betting regulations and the constitution, rules and by-laws of Natal Tattersalls were all thoroughly weighed on the scales by Judge Friedman, who dismissed Chislett's application.

A year later Sea Cottage came under starter's orders in the 1967 Rothmans July at a packed Greyville. His trainer was the craggy Syd Laird, who saddled a record number of July winners, including the legendary Colorado King (1963), Java Head (1966), Mazarin (1971), Yatagan (1973) and the incomparable Politician (1978). In a breath-taking finish Sea Cottage raced into July history, dead-heating for first place with Jollify.

Sports injuries are, however, not usually caused by a sniper's bullet. Mr Boshoff, an advocate, suffered an injury to his right eye when struck by the racquet of his brother while playing a social game of squash. The blow was not intentional, but Boshoff's insurer refused to meet his claim for damages, raising the defence that he had voluntarily assumed the risk of suffering such injury on the squash court. In a pithy and often witty judgment, Judge Kotze described the noisy energy of a squash game with the players walking, jumping and dashing around and about after the hither and thither flight of the squash ball with their racquets with greater or lesser ability swishing through the air.

Unfortunately the evidence of the brother did not leave the judge with a favourable impression of his credibility and he upheld the insurer's defence.

The sad loss by Mrs Clarke of her left eye arose from an innocent three-ball game which she and two friends set out to play on the Observatory Golf Course in Johannesburg. They were all beginners. As one of the ladies drove from the tee, she sliced the ball at a wide angle and it struck poor Mrs Clarke. Judge van Reenen expressed his intense sympathy with her, but observed that "...the law of negligence is concerned less with what is fair than with what is culpable."

The judge had regard to a number of English and Australian judgments where injuries were suffered as a result of a cricket ball hooked out of the sports ground, a golf ball striking the windshield of a passing taxi, a rugby league player being tackled into a concrete barrier behind the try line and a water skier colliding with an anchored boat. He could not resist commenting that golf, not unlike other sports, appears to have a language and custom of its own. He referred to a 1927 English case where Judge Swift pointed out that before striking a ball, a golfer "addresses" it. However, "addressing" a jury is one thing, "addressing" a golf ball is another, said Judge Swift. "You do not speak to the ball before you drive; you speak to it after you drive."

Finding that the defendant had seriously addressed the ball in a deliberate and careful attempt to concentrate on hitting it correctly, he found no negligence had been proved. The plaintiff conceded that she was aware that all the players were beginners and "wild and erratic in their playing". As a result the court concluded that the plaintiff should have positioned herself to allow for a sufficient margin of safety. Her action failed.

Many fine sportsmen have been lawyers. Perhaps the finest of his day was Percy Twentyman-Jones who represented South Africa at both cricket and rugby, playing three tests against the British Isles team in 1896 when he became only the second South African to score a test try. In 1902 he made top score for Western Province against Australia in both innings at Newlands. In 1926 he became a judge and later Judge-President of the Cape.

In an earlier amateur era it was not always easy to combine a sporting career with a professional livelihood. So, in 1907, one finds Twentyman-Jones, advocate, applying to the Cape High Court for leave of absence from articles of clerkship for a period of six months for young Sibly Snooke to enable him to participate in the test series against the touring English cricket team. The attorneys firm in Cape Town to which he was articled gave its consent and Snooke with his googlies helped South Africa thrash England 4-1 in the five match series.

The following year Twentyman-Jones again appeared a sporting tussle, this time on behalf of the Swedish tug-of-war team. It had participated in a competition in Government Avenue, Cape Town, adjacent to the Houses of Parliament, and sought an interdict to prevent the winners cup and eight gold medals being awarded to the victorious Cape Colonial Dutch team. Ten teams entered the competition, but not all lasted the pace. The team from Wales never arrived and the English, Irish and Scottish (described as Scotch by the judge) teams all withdrew as the contest advanced. Under the rules of the Cape Colony Athletics and Cycling Union, the Colonial Dutch were declared the winner. Judge Marsdorp wisely decreed "in disputes in matters of this kind the referee's decision should be final."

The reputation of a club and the financial benefits flowing from the goodwill associated with it, was the subject matter of an application brought in 1987 by the Moroka Swallows Football Club to prevent another club, its officials and players from calling themselves "the Birds". Evidence was that Moroka Swallows was known as "the Birds" since the club was founded in Soweto in 1947. Together with Kaizer Chiefs and Orlando Pirates, it became known as one of the "big three". The likelihood of its loyal supporters being misled by another club using its distinctive maroon and white colours and nickname, caused Judge Stegmann to consider the profile of the average soccer fan:

"I see no good reason why, when soccer news is widely disseminated by radio and television and information is passed by word of mouth at places of work and recreation, on mines and in factories, and amongst all levels of working men, a man should not qualify as an ordinary soccer follower for this purpose merely because he cannot read and write very well or at all. In my view illiterate soccer followers are not to be excluded."

The respondents were red-carded and the Birds were granted their interdict.

Large scale public participation in popular sports such as cycle tours, half-marathons and big bike rallies can have a negative impact on the environment and the rights of others. In 1986 the Transvaal Canoe Union applied for an order for its members to be entitled to paddle along the Crocodile River. An owner of land along its banks claimed that as her property extended to the middle of the river, canoeists who paddled along the river flowing over her property were trespassing. The canoeists claimed that the river was a public river under the common law and as such permitted navigation. That view was upheld by Deputy Judge President Eloff in the High Court in Pretoria in 1986.

His judgment was taken on appeal. Chief Justice Rabie relished the opportunity to dredge up old Roman Law authorities on the use of rivers for recreational activities:

"The Emperor Augustus fished with a hook with the intention of relaxation and many others must have done the same. Horace tells of young men who swam in the Tiber and there is no reason to believe that such activities would have been confined to navigable rivers. Pliny tells of swimming in the Clitumnus, a small river in Umbria, and of pleasure-boating on that river."

In dismissing the appeal, Chief Justice Rabie did however point out that the order did not permit portage over the landowners property where, for example, a canoe was damaged or where the river was impassable at a particular point.

Like so much other litigation, disputes involving sport are usually unedifying. But with illegal doping, match-fixing, racial incidents, breaches of contract and all the hype and hoopla that has become synonymous with modern gladiatorial contests, it is inevitable that the doors of our courtrooms will continue to be darkened by bulky figures in too tight collars and ill fitting suits.

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