

Courts Rule Fencing Big Help to Clubs in Damage Suits

By LESLIE CHILDS

TO FENCE or not to fence? Unless a golf course is exceptionally well located, so that its boundaries furnishing natural barriers against trespass by people and animals, the question is worthy of careful consideration. Especially is this true where the property adjoins a public highway and is therefore exposed to inadvertent invasions of various kinds. Let us examine this question from some of its pertinent angles.

In the first place, a trespasser is equally as guilty of trespass if he steps over an unfenced boundary line as he is when he climbs a fence to gain entrance. With this difference: If a trespasser suffers injury because of conditions upon a club's unfenced property, it may help his case against the club on the ground that his trespass was inadvertent, while if he were compelled to climb a fence to gain access,

that fact would imply knowledge of the boundary on his part and an intention to violate same by crossing.

So there is no gainsaying the advantage of having club property fenced, not only as a protection against inadvertent or willful trespass, but as an aid in pinning the offense upon a guilty person. And, in the absence of a statute to the contrary, a club has the right to erect such fencing as it may deem best for its interests, this assuming that the fence is not one that would constitute a nuisance to the public or adjoining property owners.

Animals on Golf Greens

Further, in this connection, the question of protecting golf club property from trespassing animals should not be overlooked. As everyone knows, it takes time and money to develop and maintain a golf green, and a stray porker, a few head of cattle or an old hay burning horse, if permitted to gambol thereon for a few hours, may inflict damage that will take a season or two to repair, to say nothing of the cost involved.

Generally speaking, the owner of trespassing animals is liable for damage of this kind, but being *liable* for damage and *paying* for damage are two different things. Not infrequently the owner of marauding animals is not worth a dime, subject to execution, so that even if a club obtains a judgment against him it may be only a scrap of paper so far as collecting thereon is concerned.

Another point. Under



Photo courtesy Page Fence Assn.

the common law which has been adopted in nearly all states, there is a rule holding that the owner of live stock being lawfully driven upon the highway may not be held liable for damage resulting from their trespass upon adjoining land, if caused through no fault of the owner. Under this rule it has been held that if a bull or a heifer suddenly breaks away from the herd and dashes across an adjacent field, all that can be demanded of the owner is that he remove the animal as quickly as possible. In stating this rule and the reason therefor the court in one case of this kind said:

"At common law every person was bound at his peril to keep his cattle within his own possessions, and, if he failed to do so, he was liable for their trespasses upon the lands of another whether the lands trespassed upon were inclosed or not. * * * There is an exception to the rule in favor of a person lawfully driving domestic animals along a highway. If such person exercise due care in so doing, he is not liable for injuries which they do by escaping from his control upon the adjoining lands if they are pursued and promptly recovered. * * * The exception to the rule is * * * an arbitrary and artificial one arising from necessity or an effort to relieve persons engaged in a lawful traffic on a public highway from too heavy a burden, and goes only to the extent of depriving such owner of lands adjoining the highway of a remedy by action for such trespass."

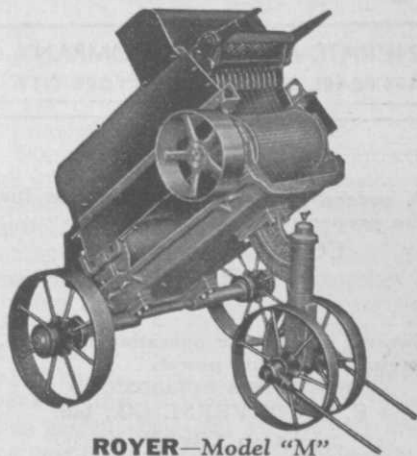
So that, in states where the foregoing rule obtains, and it is the law in many states though not all, if a herd of animals being driven along a highway suddenly stampedes and races across an adjoining golf green, it is just too bad for the golf club. For the owner of the animals would be free from liability for the resulting injury, if he can show he used due care and that the escape of the animals was beyond his control at the time.

In the light of the foregoing, there can be little question of the value of protection afforded golf club property by fencing. Of course, as has been noted, a golf course may be so exceptionally situated, in respect to natural boundaries and otherwise, as to not require protection of this kind. But, as a usual rule this is not the case and it is probable that a survey would show that a majority of golf courses could use fence protection against trespassing, at least in some measure, to good advantage.

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True, there is always the question of expense when this subject is approached, and it may be considerable depending upon the amount of ground to be inclosed. On the other hand, in many states the owners of adjoining property can be compelled to bear a part of such expense, usually one-half, under statutes governing the erection of partition fences. This is well worth looking into by a club contemplating the erection of any line fence.

But in any event a survey of the club property to determine protection needed against trespassers of all kinds by fencing, is usually well worth while. If this survey shows need of such protection, a reasonable investment for the purpose, especially at vulnerable points, will likely pay larger dividends, to say nothing of the value of the added privacy acquired thereby, than to leave the property wide open, and rely upon an appeal to the courts to either prosecute or defend an action growing out of trespass.

Readers of GOLFDOM can obtain Leslie Childs' analysis of the "law" as applied to a particular club problem by addressing him in care of this magazine.

Agua Caliente Widens Tournament Prize Money List

A GUA CALIENTE has revised division of the \$15,000 that will be cut up next January 12, 13, 14 and 15, when the "Open" will be played. First money will be \$5,000, second prize \$2,500, third \$1,500, and fourth \$900. From the figure the prize awards will range down to \$350 for tenth place. Beyond this place in the field a number of awards of \$200, \$100, and \$50 each will go to make up the total. There will be a total of twenty-five prizes.

Qualifying rounds will be held to bring the starting field to about one hundred. One will be held over the Sunset Fields courses in Los Angeles, where the golfers will be concentrated at the time, December 30, with a supplementary test, for golfers of the San Diego district, at the San Diego G. and C. C., the same day.

A BUILT-UP tee is never desirable except when necessary for visibility or drainage. Advantages of a ground-level tee are: easier to grow good turf, mowing can be done by regular fairway mowers, teeing area can be larger.