Club Not Subject to Damage Suit If Served Food Poisons Diners

By LESLIE CHILDS

WHERE a golf club operates a dining-room in connection with its club-house, the question of its liability for injury caused by the serving of unwholesome food to members or their guests is one of several angles. But, leaving aside all legal refinements in respect to the nature of the organization of the club, its liability will usually turn, in the first place, upon the character of its supervision of this department.

If the club sublets the dining-room privileges to a caterer and retains no supervision over him as to details of management, so that he is in fact an independent contractor, the club will not be responsible for accidents that may occur in the conduct of its dining-room. The caterer alone will be liable, if there is liability, and an injured person must look to him for redress.

On the other hand, if a club operates its dining-room by hiring and supervising the necessary employes, we have a quite different situation. Here it seems clear on reason and authority that the club will be liable for injury caused by serving unwholesome food, based upon the law of the state in which it is located in respect to the duty and responsibility of one serving food in a public manner.

General Rule Stated

The foregoing appears true under the general rule of liability that holds club organizations responsible for the acts of its members and servants committed within the scope of their club duties. Nor would the fact that a club dining-room

restricted its activities to the serving of food and refreshments to members and their guests, as distinguished from serving the public in general, alter the case.

The fact alone that a person was a member or the guest of a member when injured would not preclude such person from proceeding against the club for injury caused by the negligence of the latter's servants. This phase of the subject in hand was passed upon in an interesting manner in an action that arose under the following facts:

An incorporated athletic club maintained a clubhouse some distance from a railroad station that connected it with the city in which most of the members resided. For the convenience of members, the club operated a conveyance between the station and the clubhouse which was driven by a club employe.

On a certain evening a member arrived at the station and boarded the club conveyance to be driven to the clubhouse. Through negligent driving by the employe of the club, the conveyance was overturned; the club member suffered injuries that resulted in his death. Thereafter his legal representative brought an action against the club for damages, and recovered a judgment of about $10,000 against the club. On appeal the latter took the position that it could not be held liable because the injured person was a member. In disposing of this contention, the court said:

"It is urged upon this appeal that the club is not such a corporation as to be liable to its members for negligence, and counsel frankly admits that he has been unable to find any authority upon this direct point, but urges it as a reason for reversal. We are of opinion that there is no ground for this contention; an athletic association, conducting clubhouses, and sustained by membership dues, is not within the reason of the rule which limits the liabilities of hospitals and other organizations organized for the purpose of performing a service which belongs to the public. It hardly seems worth while to consider this question seriously in the absence of some principle which might properly relieve the club of its obligations to those whom it has injured through its negligence." (96 N. Y. S. 831.)

In the light of the foregoing, it seems obvious that a golf club association, whether incorporated or unincorporated, would be liable for injury caused by the negligence of the acts of its servants com-

mitted within the scope of their employment. And no reason appears that would exempt such a club from liability for negligence in the operation of a club dining-room, if this was a recognized feature of the club.

This, then, brings us to the conclusion, announced in the beginning, that the liability of a golf club for injury caused by the serving of unwholesome food in its club dining-room would be governed by the laws of the state in which the club was located. In some states, hotels and restaurants are held to impliedly warrant the fitness of the food they offer their customers and patrons.

However, in the majority of the states the law requires a showing of negligence on the part of one serving food to the public, before liability for injury from the serving of unfit food will attach. Under this general rule, the mere fact that one contracts ptomaine poisoning, breaks his teeth on a tack in pie or suffers other injury as a result of dining will not be sufficient *of itself* to charge the one serving the food with liability for the injury.

Such an injured person must go beyond that and introduce evidence that tends to show the club was negligent somewhere along the line in preparing the food or in serving it, and that this negligence was the proximate cause of the injury. Upon the introduction of such evidence, the question of whether or not it shows negligence to such an extent as to render the food server liable will usually be for a jury, as also will be the question of damages.

Needless to say, since each case of this kind must necessarily be decided in the light of its facts and circumstances, the subject cannot be covered by any hard and fast rule. However, it is believed that, according to reason, analogy, and what direct authority the law reports contain, what has been said constitutes a fair presentation of the legal responsibility of a golf club in the serving of food and refreshments to its members and their guests.