



Golfer Not Guilty of Negligence in Hitting Freak Shot

By WILLIAM JABINE

A California golfer, who accomplished the remarkable and regrettable feat of hitting a ball at right angles to the direction in which he intended it to go, found himself the defendant in an action brought by one of the members of his foursome, who was hit in the eye and severely injured by the freak shot.

The accident happened on a municipal course. The man who was hit and his son didn't pick their playing partners but played with two men assigned to them by the starter at the first tee. On the 16th hole the victim and his son took a position thirty or forty feet behind the defendant who was preparing to play his second shot. The player was left-handed and the plaintiff had just had time to comment on the fact that the hitter was using a No. 2 wood when the ball flew at right angles to its intended line of flight and hit him in the eye. It happened so suddenly that nobody was able to estimate the speed of the ball.

Had No Warning

The plaintiff contended that he had had no warning and also produced evidence showing that the defendant had suffered from infantile paralysis when less than two years of age and that the disease had left certain crippling effects of which he should have been warned. The defendant's evidence indicated that the crippling effects of the disease were not severe enough to prevent him from playing a normal game of golf, that he had been playing without incident for about two years, and that

there had been nothing in his play during the first 15 holes to suggest he was a menace to his companions.

Both plaintiff and defendant produced golf professionals as expert witnesses. The plaintiff's pro expert testified that he had been playing golf for 29 years and in all that time had never seen a shot such as the one that did the damage. He called it a "freak" shot.

The defendant's expert had been a golfer for 40 years and was permitted to testify that he did not think the shot was a result of the defendant's physical handicap. He added that he deemed such a shot not only unusual, but well-nigh "impossible."

The California district court of appeal, 1st district, div. 1, to which the case was taken, ruled in favor of the defendant, holding that the shot was so unusual that the defendant was not compelled to give warning to men standing in back of him, and that his play on the portion of the round already completed had showed that his physical handicap did not prevent him from playing a normal game of golf. Thus, the court ruled, he was not negligent in failing to advise the other members of the foursome of his handicap.

Cites Precedent Case

Despite the fact that the two professionals of long experience had never seen a shot fly off at an angle of 90 degs. to its intended direction, the Court was able to turn up a 1935 case from Connecticut where the very same thing happened. Not only did the accident result from a ball hit at 90 degs. off the intended line, but it also hit a player in the eye. In its decision, which quoted liberally from the Connecticut decision, (*Buck v. Robinson*, 23 A. 2d 156; 128 Conn.412), the California court said in conclusion:

"Respondent had no reason to believe that appellant was in a place of danger. The shot was purely a 'freak' shot. A warning that respondent was about to hit the ball would have been superfluous. Neither party knew, or had reason to believe, that the ball would go 90 degs. off course. Under these circumstances there just was not any evidence of negligence on the part of respondent." (*Oakes v. Chapman*, 322 P. 2d 241. Feb. 28, 1958.)

Foreign Pros Okayed

Foreign pros, members of the PGA in their own countries, will be permitted to compete in three U. S. PGA-sponsored tournaments in 1959.