

## Illinois Court Rules Course Creek Is Not Attractive Nuisance

By WILLIAM JABINE

A nine-year old boy was drowned while swimming in a creek where it crossed the course of a club near Chicago. The boy's parents brought suit against the club claiming that the creek was what is known in legal parlance as an "attractive nuisance" and, as children were known to have played about the creek on the club's property before the drowning, the club was negligent because of its failure to keep children off the property. The complaint also alleged that the club had dredged and widened the creek to form a pond, and that it was in full view of a highway and the adjacent forest preserve, thus adding to its allure for curious-minded children.

At the trial a jury awarded a verdict of \$5,000 to the plaintiffs. The club appealed to the Illinois appellate court. That court, after a thorough review of the evidence which showed that the boy who was drowned, and a companion, began their swimming venture in the forest preserve and only later crossed over to the club's property, reversed the lower court. It ruled that the case should not have been allowed to go to the jury but that a directed verdict in favor of the club should have been rendered.

Pointing out that under Illinois decisions, a body of water or watercourse is not deemed an attractive nuisance unless there are some extraordinary features especially attractive to children, the court held that such features did not exist on the club's portion of the stream despite the plaintiffs' contention that two culverts constituted additional attractions. The court also pointed out that there was no evidence to show that the club had dredged or widened the creek, as alleged, or that the creek where it flowed through the golf course was in full view from the highway and the forest preserve. In its opinion the court said, in part:

"The stream in which the boy was drowned was an ordinary natural watercourse. There was nothing unusual, exceptional or peculiar about it. The water on defendant's property was the same as that which flowed through the forest preserve, when the boy and his companion first went swimming in the creek. It was just as attractive and dangerous as any other stream, but not more so. Removal of brush



Dick Baxter, pro at Taconic GC, Williamstown, Mass., who is coaching the Williams College golf team for the 35th year, was recently honored at a dinner and given a plaque in recognition of his outstanding work. Among those he has tutored are Dick Chapman, Joe Gagliardi, Bill Blaney, Ed Haley, Ira Couch and Wilson Barnes. Williams College is playing host June 22-28, to the National Inter-collegiate for the third straight year.

and landscaping the area along the banks of the creek through the course made the water no more dangerous, and probably made the creek less attractive to swimmers in the nude than it was before the brush was removed, or as it ran through the preserve. Course and depth of the stream were created by nature, not by the defendant, and depended upon the volume of subterranean and surface waters which accumulated on Salt Creek upstream from the course. Defendant had no control over the elements which produced the quantity of water flowing over its northern boundary, had no right as against upper and lower riparian owners to interfere with the natural flow of the stream, and had done nothing to change the natural course or depth of the creek.

"To require riparian owners along all rivers and creeks flowing in and adjacent to Illinois to construct boy-proof fences or to employ guards to protect children and to restrain them from coming upon their lands adjacent to such streams would impose upon such owners no slight expense but a most oppressive and unbearable burden."