



OLD TIMERS

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CAMDEN 4, N. J.

Quarry Used as Water Supply Ruled Not Abandoned

By WILLIAM JABINE

The legal rule that a statute must be strictly construed proved helpful to a California golf club recently when it was sued by the parents of a boy who had been drowned in an old quarry excavation owned by the club and used as a reservoir for supplying water to fairways and greens. In bringing the action, the plaintiffs relied on a California law:



"Every person owning land in fee simple . . . who knowingly permits the existence on the premises of any abandoned mining shaft, pit, well, septic tank or other abandoned excavation dangerous . . . to minors under the age of 12 years, who fails to cover or fence securely any such dangerous abandoned excavation,

and keep it so protected, is guilty of a misdemeanor."

Fence in Poor Repair

The disused quarry had been acquired by the club in 1930 and a pump installed to take care of the watering system. The quarry was surrounded by a barbed wire fence. However, testimony showed that the fence had not been kept in good repair and that there were several gaps in it. The plaintiffs obtained a verdict in their favor in the trial court after the judge had read the above quoted statute to the jury and instructed the jury that if it found that the statute had been violated, there would be a presumption that the club was negligent.

The club appealed to the first district court of appeal, div. 2, which after a thorough review of the evidence, reversed the action of the trial court. In its opinion, the court of appeal pointed out that inasmuch as the statute must be strictly construed, it must be proved that the excavation into which the boy fell had been abandoned, not only as a quarry, but for all other purposes. On this point the court of appeal said:

Not an Abandoned Pit

"Appellant argues that under the undisputed facts of this case it was estab-

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lished as a matter of law that its reservoir, although located in an excavation which was the result of quarrying operations long since abandoned, was not an abandoned pit or excavation within the meaning of the statute. We have concluded that appellants' contention in this respect is correct. The evidence establishes without contradiction that the excavation is, and for many years has been, continuously used as a reservoir from which appellant regularly takes water by means of a pump installed therein for use in the irrigation of its course. For whatever reason, the legislature in enacting sec. 24400, expressly limited its application to abandoned excavations. An excavation which is being put to a continuous useful purpose can't be regarded as abandoned.

Question Law Makers' Motives

"Respondents refer to it as an abandoned quarry but it has not thereby become an abandoned excavation. As an excavation it is being continuously used as a reservoir and it is no more abandoned than any other artificial excavation which is similarly used."

Having by innuendo questioned the motives of the legislature in enacting the

measure which it felt compelled to construe strictly, the court of appeal went on to hint that even though the club had not violated the statute, it might be guilty of plain, ordinary negligence in letting the fence fall into disrepair. That, however, would be up to the jury at a new trial. (Schaffer v. Claremont Country Club, 336 P. 2d 254, On Rehearing, 337 P. 2d 139.)

396 in Cleveland Junior

The Cleveland Dist. Golf Assn. and the city's Recreation Dept. staged one of the country's biggest Junior golf tournaments, Aug. 7-8 at Seneca GC with 396 kids ranging in age from 9 through 17 taking part. Play was conducted over the two 18-hole courses at Seneca, one of the finest munny operations in the U. S., and scores ranged from 73 to a valiant 218. Harry C. Pollock, sec. of CDGA, was the tournament director. John Dzurik of Parma, O., was the field winner with a 153. Steve Hopkins, in the 15-year old division, shot a 157, lower than the scores submitted by the 17-year old winner, Ken Sito, (158), and Bill Hopperman, Jr. (160) in the 16-year old flight.