

Musician Takes Shortcut; Club Not Liable for His Injuries

By William Jabine

An occasional dance for members and guests is essentially a country club function and a good band is equally essential for a successful dance. These two irrefutable facts set the stage for a lawsuit recently brought by a member of a band against a Southern country club.

The band arrived at the club at about 7 p.m. in a bus. It first stopped at the main door and the band members took their instruments inside. Then they climbed back into the vehicle which then took them to the parking area where they spent about an hour shaving and dressing inside the bus.

At about 8 p.m., when it had grown dark, three members of the band left the bus and started for the clubhouse, following a lighted gravel road. When they came within 75 or 100 feet of the clubhouse, they realized the road led to a rear door. They could still see the front door and decided to take a short cut across a lawn to reach it. When they had gone about 10 or 12 feet in the direction of the front entrance, one of the trio fell in a hole in the lawn.

Although he was able to play at the dance that evening he sustained injuries that caused him to bring suit against the club. He contended the club was negligent in permitting the hole to exist in the lawn.

Not Insurer of Safety

The case went to the supreme court of North Carolina which ruled in favor of the club. The court pointed out that the musician was on the club's premises as a business invitee and that, as such, the club owed him the duty of ordinary care, but was not an insurer of his safety. It also said that by leaving the regular path and cutting across the lawn, the musician was guilty of contributory negligence. On these points the Court said in part:

"In this case all evidence shows that the plaintiff fell into the hole while in-

tentionally and materially deviating from the premises which were within the scope of his invitation — a part of the premises not designed as a road or path and the use of which for such purpose at night could not be reasonably anticipated by the defendant. When the plaintiff fell into the hole, he was a licensee and the only duty the defendant owed him was to refrain from acts of willful or wanton negligence and from doing any act which increased the hazard to him while he was on the premises.

Contributory Negligence

"It is manifest that the plaintiff's evidence establishes facts necessary to show contributory negligence as a matter of law so clearly that no other conclusion can be reasonably drawn therefrom. The plaintiff being unfamiliar with the premises left the provided road, and proceeded through darkness beyond the scope of his invitation to walk across the lawn on such premises without being able to see what dangers such darkness may have concealed. There are no circumstances to show he was misled through a false sense of safety, and there are no emergency or stress of circumstances that render it necessary that he should cross the lawn and not use the provided path." (*Cupita v. Carmel Inc.*, 133 S.E. 2d 712.)

Damages Awarded, Denied in Two Recent Golf Decisions

Two law cases, of interest to golfers as well as clubs, were decided in November. In Stockton, Calif., a superior court jury awarded \$85,000 damages to a 13-year old boy for injuries suffered when he was hit in the head by a golf ball in May, 1958. The damages were assessed against the Stockton G & CC because it was decided that the club induced boys to come on to the course by paying them for lost golf balls. The player who hit the ball was not held liable for the injuries the boy suffered.

In Atlanta, the Georgia court of appeals ruled that anyone playing golf assumes the risk of being hit by a golfer in another fairway. The decision was the outgrowth of a \$25,000 damage suit that originated in Albany. The court had this to say: "For this court to hold that it was negligent for one to play golf who was not able to control the direction of his shot would not only be unreasonable, but would remove all congestion on golf courses."

