Two Courts Agree: Even Experts Can't Control Ball's Flight

By WILLIAM JABINE

When a court declares that something is common knowledge and need not be formally proved, it is a fairly safe bet that most people have been possessed of that knowledge for some time. It is interesting to note that within a month of each other, the highest courts of two widely separated states have made such rulings in regard to matters of which most golfers have been well aware for many years.

The court of appeals of Georgia solemnly stated that "it is common knowledge that so-called expert golfers make occasional hook and slice drives;" and the Supreme Court of Minnesota with equal solemnity asserted: "it is common knowledge, even to nonplayers, that the force of a driven golf ball is intense, and it can be classified with dangerous instruments."

The plaintiff in the Georgia case was a golfer who was hit by a ball driven from the tee of an adjacent hole. He contended the defendant was an inexpert golfer who knew his own golfing faults, and that he either should have waited when he saw players within range on the adjoining fairway, or should have given warning of his intention to drive. The plaintiff was victorious in the lower court, but the court of appeals ruled that negligence on the part of the defendant had not been proved and the plaintiff had assumed the risk of being hit.

Even Experts Fail

In discussing the plaintiff's allegation that the defendant was so inexpert that he should have waited or warned the men on the adjoining fairway, the Court said: "The plaintiff's allegation that the defendant was an 'inexpert golfer to the extent that he was . . . not able to control the direction his golf ball travels after being driven' is of no assistance to him here. Literally interpreted, this allegation means that the defendant is so inexpert that he cannot control the course of his ball *after it is in flight.* We are constrained to say that, as much as they may desire it, even expert golfers are unable to control the ball once it is in flight.

Too Great an Imposition

"Even using the allegation as the plaintiff apparently intended it (i.e. to allege that the defendant was unable to control by his intent and desire before and at the time of driving, the direction the ball took from the point where he struck it), it is common knowledge that so-called expert golfers make occasional hooked or sliced drives. It has been said that: 'To hold that a golf player was negligent merely because the ball did not travel in a straight line, as intended by him, would be imposing upon him a greater duty of care than the Creator endowed him with the faculties to carry out.' (Citations.) This reasoning also applies to the allegations of negligence contained in Paragraphs 11 (3) and 11 (4). 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." (Shaw v. Thomas, 123 S. E. 2d 327)

Minnesota Case

The plaintiff in the Minnesota case was a caddie who was hit while shagging balls driven from a practice tee. Incidentally the complaint named as defendants both the player who drove the ill-fated ball and the club professional who was instructing the offending player at the time. The trial court dismissed the complaint against both defendants. The caddie appealed to the supreme court. The case against the professional was dropped and the appeal was concerned only with the alleged negligence of the player who had driven the ball.

The testimony in the case developed some interesting sidelights. It was disclosed that at the time of the accident there were three players on the practice tee: a woman golfer whose playing was described "as kind of wild hitting in different directions" and "hitting all over the place"; the player-defendant who had a handicap of 36 and should have had an even higher handicap, and was described by the professional as "just a general poor player through all clubs;" and a third man whose ability was not disclosed.

The supreme court reversed the ruling of the trial court in dismissing the com-

plaint, saying that the plaintiff had presented questions which should have been submitted to a jury. In so doing it discussed the peril to which a caddie is exposed while shagging balls driven from a practice tee and made an interesting suggestion that might well be followed. It said: "On the practice fairway, players do not shout 'fore' before driving. It seems that a caddie is in greater danger while shagging balls on a practice fairway where a battery of from two to seven players may be hitting balls than on a regular fairway. He is ahead of the players all the time. Some precaution must be taken to replace the shouting of 'fore', especially when the caddy is in a place of danger and unaware of a drive to be made." (Hollinbeck v. Downey, 113 N. W. 2d 9.)

Present Club's Case for Fair Tax Treatment

Testimony of Frank G. Hathaway presented to Senate Finance Committee on April 10, 1962, on H. R. 10650 has been reprinted and may be secured from Hathaway, Los Angeles Athletic Club, 431 W. 7th st., Los Angeles 14.

Hathaway is sec-treas., National Club Assn., a new association formed by business, social and athletic clubs in California. He also is pres. and gen. mgr. of the Los Angeles AC, Riviera CC and Pacific Coast Club.

Hathaway puts forth a logical and aggresive case for tax justice for clubs. His facts and logic are especially interesting in their treatment of a club's use as a legitimate business expense in a non-communistic country.

Receipt for Deduction

Gifts, representing valuation of used clubs turned in as payments on new clubs, are made in cash by a pro to a local charity. The golfer, who turns in the clubs, gets a receipt from the pro showing the clubs to be a tax deductible charity gift. The pro says he got the idea from receipts given for gifts to a rummage shop conducted by a charity organization in which his wife is active. The used clubs are given to caddies.

Clarifies Tax Deduction

Discussing taxes at a recent convention in Washington, D. C., Mortimer B. Caplin, commissioner of internal revenue, clarified some of the confusion over tax-deductible expenses. "We have intensified our audit in the travel and entertainment area," Caplin said, "but there has been no change in the concept of what constitutes deductible expenses. When these are clearly shown to be for business purposes they will continue to be allowable." Caplin added that confusion has arisen in recent months because some people have looked upon tentative tax proposals as already having been enacted into law.

This oversize check isn't negotiable, but it's backed up by good, hard cash. Marilynn Smith took it home with her after winning the Sunshine Open at Miami Springs CC in April.

Miami Metro News Bureau photo

You may want to call this the fractured twist or something like that, but it's the honest-to-goodness putting stance of Ruth Jessen of the Ladies PGA. Photo was taken at the Sunshine Open.