Jury Denied Right to Decide If Ball Retriever Is A Business Visitor

By WILLIAM JABINE

A highly debatable custom of long standing and common to many golf clubs throughout the country becomes even more debatable in the light of a decision handed down recently by the third district Court of Appeal of California. It involves the practice of allowing boys who have found lost golf balls to sell them at the pro shop for a nominal sum.

This custom was an important factor in the trial of an action against the Stockton G&CC, brought on behalf of a nine-year-old boy who was struck by a hooked drive while hunting for golf balls close to the boundary of the club's course.

The suit was brought against both the club and the golfer who had driven the ball. The jury brought in a verdict in favor of the golfer but against the club. The club appealed to the Court of Appeal, contending that the trial judge had charged the jury that because of the above mentioned custom the boy was a business visitor or invitee, and that the question of the boy's status on the club's property was a question of fact that should have been left to the jury.

The Court of Appeal agreed with this contention and reversed the judgment against the club, leaving the way open for a new trial. In so doing, the Court of Appeal indulged in a nine-page discussion of the facts of the case and the legal principles that should be applied thereto.

Summary of The Facts

Here is a greatly condensed summary of the facts:

Only portions of the boundaries of the club's property were fenced although there was a three-strand wire fence about 3 feet in height at the point where the boy was hit. There also were "Private Property—No Trespassing" signs. Members had been asked orally to drive off boys found on club property.

The custom of buying balls turned in at the caddie house had been in existence for some 30 years. Balls were bought for five or ten cents each according to their condition and sold to members for 35 cents; balls marked with members' names were redeemable at prices paid to the boys.

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The boy who was hit had been warned to stay off the course by his mother and by his schoolteacher and immediately before the accident had been warned off by the golfer who hit him. When the golfer discovered he had hit the boy (his ball had bounced back into the fairway) he put the youngster in a golf car and took him to his home nearby.

The club's pro testified that when buying balls from boys he occasionally inquired as to where the balls had been found, but the assistant pro, who bought about twice as many balls as the pro, said he never asked that question. The club's directors had discussed putting up more fences, but a former president of the club testified that he had visited many golf clubs in California and Canada and that he knew of only one course (in California) that was completely fenced. The club did not post watchmen at its gates.

Was He Invited?

The trial judge's charge to the jury, which the Court of Appeal found improper, was worded as follows: "If you should find from the evidence that the plaintiff child's presence on the country club property at the time of the accident was occasioned by the fact that plaintiff had gone upon the property for the purpose of finding and selling golf balls to the professional, or his agent or agents, then you are instructed that the plaintiff was a business visitor and an invitee . . . and each of the defendants owed to him the duty of exercising ordinary care for his safety . . . and failure to exercise such ordinary care would constitute negligence."

In further discussion of the charge by the trial judge, the Court of Appeal pointed out that it effectually took away from the jury the determination of the fact whether or not the boy was an invitee. The charge undoubtedly put undue emphasis on the custom of purchasing golf balls from boys at the expense of the other evidence. Whether or not a new trial results in a victory for the club, a debatable question remains: Will the small profit per golf ball accumulated over a period of 30 years balance the lawyers' fees that the club will have to pay? (Clawson v. Stockton Golf and Country Club. 34 Cal. Reptr 184.)