

Ball Manufacturer Gets Go-Ahead After Judge Clarifies Ordinance

BY WILLIAM JABINE

Recently the supreme court of Pennsylvania projected itself into the periphery of the golf business when Justice Michael A. Musmanno wrote the opinion in a zoning case in which objecting neighbors sought to bar an industrial plant in which balata, used in making golf balls, is processed.

The local board of adjustment had approved the building of a light industrial plant, but the court of common pleas reversed the board's decision. The owners of the factory then appealed to the supreme court. The decision of the court of common pleas was reversed and the case remanded for action in accord with Justice Musmanno's opinion holding that the industry involved could operate its new factory.

Justice Musmanno reached his conclusion by first quoting the lower court's reasons for banning the factory, and then proceeding to refute them one by one. The italicized phrases are taken directly from the text of the local ordinance. Justice Musmanno's list follows:

"The lower court apparently overlooked the whole significance of the ordinance and concluded that the procedure employed by the industry could not be classified as *manufacture compounding assembly or treatment*; that the industry did not work with *previously prepared materials*; that the balata imported from the equator cannot be classified as *natural and synthetic rubber*; and that what the company eventually shipped from its plant cannot be categorized as articles of *merchandise*."

The objectors had also contended that

the plant conducted processing operations, and as processing was not mentioned in the ordinance, there was a violation thereof. Justice Musmanno ruled that the word *treatment*, as used in the ordinance, certainly included *processing*. In fact he declared that the terms are interchangeable.

He ruled that the work done in gathering the balata and getting it to market made it *previously prepared material*. On this point he said: "The lower court said: 'The balata processed . . . cannot, by any stretch of the imagination, be classified as *previously prepared material*.' This interpretation stretches further than the *natural or synthetic rubber* allowed in the ordinance. The operation heretofore briefly described the chopping down of the trees, the draining of the sap, the boiling and cooling thereof, the forming of blocks therefrom. It can hardly be considered other than *previous preparation* for the processing or treatment which follows at the plant."

Justice Musmanno continued: "The lower court then found that the refined product sold by the industry 'was not an *article of merchandise*.' What else could it be? The court quoted from Black's Law Dictionary and defined merchandise as: 'All commodities which merchants usually buy and sell whether at wholesale or retail; wares and commodities such as are ordinarily the objects of trade or commerce . . .'

"Balata is certainly a commodity which is 'ordinarily the object of trade or commerce.' Without quoting any statistics on the subject, it is evident to any observer that golf products and equipment make up an industry and use whose ramifications are apparent in every part of the United States."

The court held that the industry " . . . is the producer of a component part of a *finished product*." This certainly would not exclude it from being *merchandise*, Justice Musmanno ruled. Cloth, after all, he said, is only a component part of coats, trousers and dresses, but who could possibly argue that it is not merchandise? (*Landis v. Zoning Board of Adjustment*, 198 A. 2nd 574.)