

# When is a golfer “in range”?

By WILLIAM JABINE

**T**he old question of when a golfer may be considered “in range” of another golfer who is preparing to make a shot was discussed at considerable length recently by the St. Louis Court of Appeals of Missouri. A man, whose wife was hit on the head by a ball driven by another woman golfer, brought an action for \$5,000 damages. The jury returned a verdict for the defendant, but the judge granted the plaintiff's motion for a new trial. The defendant then appealed this action to the Court of Appeals.

That Court's opinion describes the accident as follows: “Respondent's evidence was that Mary Jane Take, the wife of respondent, was playing golf at the Westborough Country Club in a twosome. Her partner was a Mrs. Chipps. Mrs. Take and Mrs. Chipps were playing hole number seventeen. It was a clear and bright day. To play the seventeenth hole you drive across a creek and up a hill towards the green. (This hole plays from north to south.) Immediately west of the seventeenth hole is the fourteenth hole. The fourteenth hole runs from south to north. Immediately west of the fourteenth hole is out of bounds.”

Mrs. Take teed off on seventeen, and had an excellent drive, which went across the creek and halfway up the hill. Mrs. Chipps wasn't so fortunate, and hit her ball in the creek. Mrs. Take went with Mrs. Chipps to look for the ball. Mrs. Take walked along the bank on the north side of the creek in a westerly direction to a point west of a large tree, which was

*Court of Appeals  
of Missouri affirms trial  
court's decision to grant  
a new trial because of  
misleading instructions.*

located in the rough on the east edge of the fourteenth fairway, where she stopped. They could not find the ball.

Another group of ladies was on the seventeenth tee waiting to tee off, so Mrs. Take and Mrs. Chipps moved their golf car and parked it under the tree, and motioned to the group on the seventeenth tee to play through.

Mrs. Take was facing north, with her back to the fourteenth tee. People were on the fourteenth green finishing play on that hole. Mrs. Orth, the appellant, and her companion, Mrs. Rinehart, were on the 14th tee waiting to shoot.

The players on the fourteenth green either waved to Mrs. Orth to shoot, or else were leaving the green. Mrs. Take saw Mrs. Orth and her companion approach the fourteenth tee before she turned to watch the players teeing off on seventeen, but didn't think they would shoot while she was standing within range. Fourteen is a par three hole of one hundred eighty-three yards.

“Mrs. Orth teed up her ball and drove toward the fourteenth green. She stated she did not see Mrs. Take before she shot. It was a good drive. After Mrs. Orth shot, she looked up, saw Mrs. Take, and screamed ‘fore’ (the call which golfers use to warn other persons on the course). Mrs. Take didn't hear the warning as power motors were operating nearby, and was struck on the back of the head by the ball.

“Mrs. Orth stated that when she first saw Mrs. Take, that Mrs. Take had her

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back to Mrs. Orth. Mrs. Orth had been playing golf for nine years and was an experienced player. She identified a place on a photograph, which was admitted into evidence as plaintiff's exhibit one, as the place where Mrs. Take was standing when she was struck. The spot was marked by a pin hole and by Mrs. Orth's initials.

"This spot was some distance to the west of the large tree heretofore mentioned, and near the east edge of the fourteenth fairway. There are no obstructions between the fourteenth tee and the spot where Mrs. Take was standing, and a person standing in the spot could easily be seen from the 14th tee.

"Mr. James Manion, a veteran golfer, testified that if Mrs. Take had waved to golfers on the seventeenth tee to play through, that she would be watching the seventeenth tee and would have her back to the fourteenth tee. Mr. Manion also testified that if there was a person on the course with their back toward a tee,

the persons on the tee should not shoot until the person moved out of the way, or until they were warned, and were aware of the warning. It was only about one hundred to one hundred twenty yards from the fourteenth tee to the place where Mrs. Take was standing when she was hit."

After describing the nature of Mrs. Take's injuries, the Court continued: "Rule 3 of the Rules of Golf of the United States Golf Association on page one, section one, which establishes customs and practices for golfers, states that no player should play, until the players in front are out of range.

"Appellant's testimony in brief was as follows. Mrs. Orth stated she was standing on the fourteenth tee with Mrs. Rinehart waiting for people to leave the fourteenth green. She stated the players left the fourteenth green and she prepared to drive. She saw no one ahead except some men working down near the creek. She looked to the left and right, at the area where Mrs. Take was standing when she was struck, but saw no one.

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"She hit the ball, and after she hit it, she saw Mrs. Take walking around the tree with her back toward Mrs. Orth. Mrs. Orth yelled 'fore' as did Mrs. Rinehart, but to no avail. Mrs. Orth was familiar with the golf rule previously stated. She said if she had seen Mrs. Take before she hit the ball that she would not have hit the ball.

"According to the caddy for Mrs. Orth, Mrs. Take was about ten feet west of the tree in question when she was hit. Mrs. Orth was on the tee for several minutes before she hit the ball.

"In rebuttal, Mrs. Take said she had stood on the same spot for a minute or more before she was hit."

The trial court's action in granting the plaintiff's motion for a new trial came after the plaintiff's counsel had argued that it had erred in giving certain instructions to the jury that unduly emphasized the possibility that Mrs. Take had been negligent in invading the rough adjacent to the fourteenth fairway without keeping a proper watch for players

on the fourteenth, and had not sufficiently emphasized the possibility that Mrs. Orth was negligent in driving while Mrs. Take was within range.

The Court of Appeals ruled that these instructions were calculated to mislead the jury, "as they might find and believe from it that Mrs. Take could not recover merely because she was in the rough of the fourteenth hole looking for a lost ball. This injected a false issue into the case and was prejudicially erroneous."

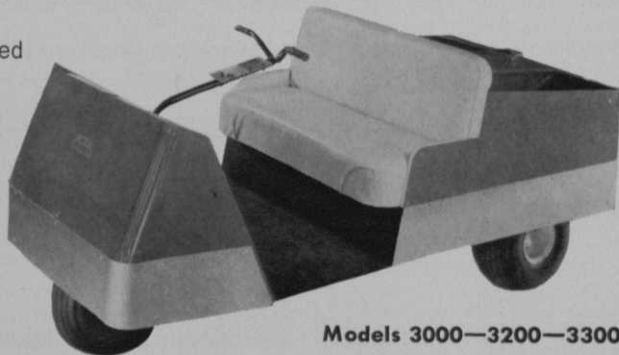
Thus the Court of Appeals held that invasion of the rough adjacent to a nearby fairway is not prima facie evidence of negligence in the absence of evidence of lack of proper care once there, and affirmed the trial court's action in ordering a new trial because of its own misleading instructions. (Take v. Orth 395 S.W.2d 270.)

(Ed. Note: Readers of GOLFDOM may question the statement in the opinion of the Court of Appeals that: "It was a good drive" when in fact it hit a player who was in the rough and so off the fairway for which the shot was intended.) •

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