necessarily usually ignores local legislation, it is slow and renders the orderly development of a topic difficult.

If pursued to the exclusion of lectures the student finds it hard to obtain a general view of any large branch of law. It is regarded as excellent mental training, but this is apt to depend upon the skill of the teacher in posing problems and leading the student to think them out. It takes so much time that it is impracticable in a part time school, and many teachers also regard it as undesirable unless preceded by a general survey of the subject through lectures or text books. Dean Langdell in later years did not always adhere to this method. He not only delivered set lectures, but read them from his manuscripts. The case method cannot be ignored, but its adoption in a compulsory Law School for a pass course calls for careful and critical investigation. While very generally adopted in full time schools in the States, the comments upon it are not always enthusiastic.

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DUTIES OF OCCUPIERS AND OWNERS OF DANGEROUS PREMISES.

(*Concluded.*)

III. Duty to Trespassers.

Duty Stated.—The occupier of premises owes no duty to trespassers who unlawfully enter upon his premises, except that he must not deliberately or wilfully entrap them to their injury. Since the trespasser does not enter by permission, the occupier need not even warn him of the dangers existing on the premises. The general rule is that a man trespasses at his own risk, and cannot complain if he is injured through the insecurity of the premises. In one leading case[52] the facts were that the plaintiff was a trespasser on a railway train which was wrecked by the negligence of the servants of the railway company. The train was not in use as a passenger train as the plaintiff knew, and the plaintiff had taken a precarious stand on the platform in disobedience of a by-law of the company, and was subsequently injured. It was held that there was no breach of duty to the plaintiff by the railway company which was merely "under a duty to the plaintiff not wilfully to injure him; they were

[52] *Grand Trunk Ry.* v. *Barnett*, 1911, A. C., 361; *Bondy* v. *Sandwich Ry. Co.* (1911), 24 Ont. L. R., 409.

not entitled unnecessarily and knowingly to increase the normal risk by deliberately placing unexpected dangers in his way." Subject to that limitation he trespassed at his own risk. The rule in this case was followed by the Supreme Court of Canada in a case which arose in Nova Scotia.[53] An engine of the appellant company was making an extra trip at an unusual hour on a stormy night in winter, and the engine ran over and killed a doctor, who had left his home for the purpose of attending a sick call, and was walking along the railway track when killed. By the Nova Scotia Railway Act every person who walks on a railway track is liable to a penalty. The jury found that the railway company was negligent in not having lights on the engine, and in having a defective whistle. The jury also found that, to the railway company's knowledge, the public had habitually travelled on the track at the place in question. It was held by the Supreme Court of Canada that he was a trespasser, and that the only duty of the railway company to him was not to run him down wilfully or not to act recklessly in disregard for human life. And in *Great Central Ry.* v. *Bates*,[54] it was held that a policeman on his beat who saw a warehouse door open and entered to investigate in accordance with his duty and fell into an unfenced sawpit inside, could not recover, because having no legal right to enter and not being an invitee or licensee he was a trespasser to whom the occupiers owed no duty of care.

Defective Premises.—A trespasser cannot recover for injuries sustained by reason of defects in the premises over which he is trespassing. For as to him the occupier is under no liability if, in trespassing, he injures himself on objects legitimately on the premises, nor is he bound to take care lest a trespasser suffer injury through the premises being in a state of disrepair;[55] nor can he recover if injured through the negligent activities of the occupier on the premises.[56]

Intentional Injury.—But though the trespasser must take the premises as he finds them, and has no right of action for injuries sustained by their defective condition, yet he is not wholly without remedy. The occupier must not seek to injure a trespasser by setting traps for him so as to "increase the normal risk by deliberately plac-

[53] *Maritime Coal Co.* v. *Herdman* (1919), 59 Can. S. C. R., 127; *Cf. Lajoie* v. *The King* (1921), 20 Can. Ex. Court R., 473; *DeVries* v. *C. P. R.*, (1916), 10 W. W. R. 85; *Baldrey* v. *Fenton* (1914), 6 W. W. R., 1441; 29 W. L. R., 258.

[54] [1921] 3 K. B., 578.

[55] *Hardy* v. *Central London Ry.*, [1920] 3 K. B., 459.

[56] *Jones* v. *Foley*, [1891] 1 K. B., 730; *Coffee* v. *McEvoy*, [1912], 2 I. R., 290. As to the duty of care owed to trespassers whose presence is known to the occupier, see *Petrie* v. *Rostrevor Owners*, 1898, 2 Ir. R. 556; *C. P. R.* v. *Henrich* (1913), 48 Can. S. C. R., 557; 21 Halsbury's Laws of England, 394.

ing unexpected dangers in his way."[57] Thus he must not intentionally assault the trespasser, or set spring guns or other engines dangerous to human life.[58] Where trespassers stealing a ride on the back of a railway tender were forced off by a brakeman, so that one of them fell beneath the train, a verdict against the railway company was held to be justified.[59] But an occupier is, of course, entitled to protect his property from trespassers provided the thing done is no more than is reasonably necessary for that purpose. He may lawfully keep a dog, or put up a barb-wire fence.[60]

IV. Liability on Warranty of Safety.

Rule in Francis v. *Cockrell.*—The owner or occupier of premises owes towards persons who come upon the premises upon business of mutual concern the common law duty stated in *Indermaur* v. *Dames,* —to take reasonable care to prevent damage from unusual danger, which he knows, or ought to know. But sometimes there is a greater obligation imposed by the law upon the owner or occupier of the premises. Persons who pay to enter upon premises are, of course, invitees, but are also entitled to greater protection by reason of their contractual relation to the occupier which leads to the implication of a warranty that the premises are reasonably safe. Such an invitee if injured on the premises has therefore an additional cause of action for breach of an implied warranty of safety.[61] The rule on this point has been thus stated:—

"Where the occupier of premises agrees for reward that a person shall have the right to enter and use them for a mutually contemplated purpose, the contract between the parties (unless it provides to the contrary), contains an implied warranty that the premises are as safe for the purpose as reasonable care and skill on the part of anyone can make them. The rule is subject to the limitation that the defendant is not to be held responsible for defects which could not have been discovered by reasonable care or skill on the part of any person concerned with the construction, alteration, repair or maintenance of the premises . . . But subject to this limitation it matters not whether the lack of care or skill be that of the defendant,

[57] *Grand Trunk Railway* v. *Barnett, supra; Lowery* v. *Walker,* [1910] 1 K. B., 173; *Gilbert* v. *Southgate* (1915), 24 D. L. R., 202.

[58] *Bird* v. *Holbrook* (1828), 4 Bing. 628. The setting of spring-guns and man-traps is now, in Canada, a criminal offence. See section 281 of the Canadian Criminal Code.

[59] *Diplock* v. *C. N. R. Co.* (1916), 26 D. L. R., 544 (Sask.). See *Petrie* v. *Rostrevor Owners,* [1898] 2 Ir. R., 556; *Degg* v. *Midland Ry. Co.* (1857), 1 H. & N., 773.

[60] *Sarch* v. *Blackburn* (1830), 4 C. & P., at p. 300; *Brock* v. *Copeland* (1794), 1 Esp. at p. 203; *Halliday* v. *Hewitt,* 8 Brit. R. R., 573.

[61] *Maclenan* v. *Segar,* [1917] 2 K. B., at p. 329.

or his servants, or of an independent contractor or his servants, or whether the negligence takes place before or after occupation of the premises by the defendant."[62]

This principle was established by the case of *Francis* v. *Cockrell,*[63] which held that a defendant in occupation of a racecourse who sold a ticket to the plaintiff for a seat on the stand (which had been improperly built by an independent contractor), was liable, although not personally negligent, for injuries sustained by the plaintiff when the stand collapsed. The decision is based on the ground that the defendant warranted that the race-stand was reasonably fit for the purpose for which it was to be used, subject to this limitation that he was not to be held responsible for latent defects which could not have been prevented or discovered by reasonable care. "There is the principle which I hold to be well established by all the authorities, that one who lets for hire or engages for the supply of any article or thing, whether it be a carriage to be ridden in, or a bridge to be passed over, or a stand from which to view a steeple-chase, or a place to be sat in by anyone who is to witness a spectacle, for a pecuniary consideration, does warrant and does impliedly contract that the thing or article is reasonably fit for the purpose to which it is to be applied; but secondly he does not contract against any unseen and unknown defect which cannot be discovered, or which may be said to be undiscoverable by any ordinary or reasonable means of inquiry and examination."[64]

Illustrations of Rule.—Applying the same principle the owners of a rink have been held liable in damages for injuries sustained by a spectator at a hockey match who was injured by reason of the breaking of a railing of the gallery above the ice in which he was seated. This railing was not so constructed as to resist the pressure of the spectators leaning forward to watch the play, which pressure was something to be expected and should have been guarded against.[65] In *Maclenan* v. *Segar,* an hotel proprietor was held liable on the same principle for injuries sustained by a guest owing to lack of fire-escapes. The same warranty exists where the relationship between the parties is that of restaurant keeper and guest.[66]

The rule applies not only to the personal safety of the plaintiff, but also to the safety of any chattel or animal for the storage or accommodation of which on the premises money is paid. Thus the owner of a stable who agrees to feed and stable a horse is under an

[62] *Maclenan* v. *Segar, supra,* at p. 332.
[63] (1870), L. R. 5 Q. B., 501.
[64] *Francis* v. *Cockrell, supra, per* Kelly, C.B., at p. 508; *Cf. Cox* v. *Coulson,* [1916] 2 K. B., 177.
[65] *Stewart* v. *Cobalt* (1909), 19 Ont. L. R., 667.
[66] *Brannigen* v. *Harrington* (1921), 37 T. L. R., 349.

obligation to see that the stable is in a reasonably safe condition so far as reasonable care and skill can make it so.[67] And McCardie, J., suggests[68] that the rule in *Francis* v. *Cockrell* should be applied in its entirety to the case of occupiers of docks and quays who invite third persons to use for reward the facilities provided for ships and goods.

It may be noted that the duty being a contractual one does not rest on the personal negligence of the occupier or his servants, and is not discharged by employing an independent contractor or competent architect to build or repair the premises.[69]

Conflict of Authorities.—The authorities are not unanimous in favour of the view above taken, namely: that there is a higher duty towards persons entering the premises under a contract than towards invitees under the rule in *Indermaur* v. *Dames*. Sir Frederick Pollock[70] seems to suggest that there is no difference in the substantive duties involved other than that where the person has paid for his admission the warranty of safety excludes any question of what defects the occupier knew or ought to have known. That is, that the duty *ex contractu* renders his knowledge immaterial. And certainly in some cases where the entry was made under a contract the question of warranty was disregarded or overlooked.[71] But on the other hand it has been recognized in other and more modern authorities,[72] and Salmond states the liability on a warranty of safety as being greater than that under the rule in *Indermaur* v. *Dames*, and his treatment of the subject is approved by McCardie, J.[73] This latter view is, it is submitted, the correct one.

V. Duty of Landlord to Tenants and Strangers.

General Rule.—Unless the owner of the premises has expressly undertaken to discharge the duty of repair or has undertaken not to let the premises in a dangerous condition he is not bound to repair or to keep the demised premises safe, and is not liable for injuries sustained by the tenant or any of his household, or by strangers or

[67] *Gunn* v. *C. P. R.* (1912), 1 D. L. R., 232.
[68] *Liebigs, etc., Co.* v. *Mersey Docks*, [1918] 2 K. B., at 386.
[69] *Maclenan* v. *Segar, supra; Valiquette* v. *Fraser* (1908), 39 Can. S. C. R. 1.
[70] Pollock on Torts, 11th Ed., pp. 516, 519.
[71] *Sandys* v. *Florence*, 47 L. J. (Q.B.), 598; *Walker* v. *Midland Ry.* (1886), 55 L. T., 489; *Searle* v. *Laverick*, L. R. 9 Q. B., 122.
[72] *Hyman* v. *Nye* (1881), 6 Q. B. D., 685; *Welsh* v. *Canterbury & Paragon, Ltd.* (1894), 10 T. L. R., 478; *Dunster* v. *Hollis*, [1918] 2 K. B., 795; *Cow* v. *Coulson*, [1916], 2 K. B., at 181; *Hayward* v. *Drury Lane Theatre* [1917], 2 K. B., 915.
[73] Salmond on Torts, 5th Ed., p. 408; *Maclenan* v. *Segar, supra*, at p. 333; and see article in 34 L. Q. R., 160.

persons using the premises by his permission where such injuries are due to the lack of repair of the demised premises.[74]

But in the case of a demise of a furnished house there is an implied warranty of habitability and that it is fit for occupation at the beginning of the tenancy,[75] but not that it will remain so. It has recently been held that the letting of a house lately occupied by a person suffering from an infectious disease violated this implied warranty where there was an actual risk to the incoming tenant.[76]

Privity of Contract.—The duty of the landlord with respect to the state of the demised premises depends entirely on his agreement with the tenant. Though he will be liable to a tenant for injuries suffered by the tenant from the breach of a covenant to repair, yet (even where the landlord has covenanted to repair), he will not be liable to any other person who is a stranger to the contract. Thus it was held that a landlord who had broken his covenant to repair was not liable to the wife of his tenant who was injured by reason of defective premises, on the ground that she was not a party to the contract.[77] A lodger of a tenant of an apartment house has no contractual rights against the landlord if injured by reason of a defect in the common stairway; his position when using the stairs is that of a licensee of the landlord and one entitled only to protection against concealed dangers.[78]

Landlord Retaining Control.—Where an owner lets part of the premises and retains control over the other part he is subject to the usual liability of an occupier in tort with respect to the part over which he retains control. Where he retains possession and control of a staircase or doorway which is for the common use of himself and his tenants he is under no duty to light or keep them in repair, unless he has covenanted to do so. He is only bound to use reasonable care to prevent damage being suffered by his tenants or by persons lawfully coming on the premises from an unusual or unexpected danger or trap of which he has notice.[79] A landlord has been held not liable for an injury sustained by a child of a tenant of one room on the

[74] *McIntosh* v. *Wilson* (1914), 14 D. L. R., 671, 23 Man. L. R., 653; *Terainshi* v. *C. P. R.*, 25 B. C. R., 536; *Lane* v. *Cox* [1897] 1 Q. B., 415; *Cavalier* v. *Pope*, [1906] A. C., 428.

[75] *Smith* v. *Marrable* (1843), 11 M. & W., 5; *Wilson* v. *Finch*, Halton, (1877), 2 Ex. D., 336; *Sarson* v. *Roberts* [1895] 2 Q. B., 395. See *Gordon* v. *Goodwin* (1910), 20 O. L. R., 327.

[76] *Collins* v. *Hopkins* (1923), 39 T. L. R., 616.

[77] *Cavalier* v. *Pope*, [1906] A. C., 428; *Cameron* v. *Young*, [1908] A. C., 176; *Malone* v. *Lasky*, [1907] 2 K. B., 141.

[78] *Fairman* v. *Perpetual, Etc., Society*, [1923] A. C., 74.

[79] *Fairman* v. *Perpetual Investment Building Society*, [1923] A. C., 74; *Erickson* v. *Traders Building Assn.*, (1916) 31 D. L. R., 544; *Wallich* v. *Great West. Co.*, (1914) 20 D. L. R., 553; *Kynock* v. *Bank of Montreal*, [1923] 3 D. L. R., 877.

premises, the child sustaining the injury when playing on a flight of steps leading from the front door. The child fell through the railing which lacked an upright bar. The lessor owed no duty to repair the railing, but was merely bound to use reasonable care to prevent damage from unusual danger or from a trap, and, as the defect in the railing was obvious, there was no trap, and no liability.[80] So in another case[81] where the wife of one of the tenants in an apartment house fell on a step which was under the control of the owner, it was held that as the fall was due to the absence of a railing, and not to any disrepair in the steps themselves there was no liability on the part of the owner since the danger was patent. The only obligation on the owner with reference to the approach to the house was to avoid exposing the plaintiff to any unexpected danger without warning,—that is to say the obligation imposed by the rule in *Indermaur* v. *Dames.*

Miller v. *Hancock.*—In *Miller* v. *Hancock,*[82] the Court of Appeal in 1893 held that a landlord was under an implied contractual liability to his tenant to keep in reasonably safe repair a staircase used in common by tenants of his office building and remaining in his control, and that third persons coming to the premises on business with the tenant could maintain an action for breach of this duty. There was an implied obligation to the tenant that the staircase would afford a reasonably safe entrance and exit, and it was intended by necessary implication that the landlord should keep the stairs reasonably safe for the use of third persons using them in the ordinary course of business with the tenants.

This decision has been frequently discussed and criticized as being inconsistent with *Indermaur* v. *Dames,* and the principle of privity of contract. Sometimes reluctantly followed, it was never cited with approval, though efforts were made to preserve its authority on the assumption of the actual existence of a concealed danger or invitation.[83]

In 1923 the House of Lords had to deal with a case which was almost identical on its facts with *Miller* v. *Hancock.*[84] The authori-

[80] *Dobson* v. *Horsley,* [1915] 1 K. B., 634.
[81] *Lucy* v. *Bawden,* [1914] 2 K. B., 318.
[82] [1893] 2 Q. B., 177.
[83] *Hargraves* v. *Hartopp,* [1905] 1 K. B., 472; *Huggett* v. *Miers,* [1908] 2 K. B., 278; *Lucy* v. *Bawden,* [1914] 2 K. B., 318; *Dobson* v. *Horsley.* [1915] 1 K. B., 634. *Hart* v. *Rogers,* [1916] 1 K. B., 646; *Dunster* v. *Hollis,* [1918] 2 K. B. 795; *Graves* v. *Western Mansion, Ltd.,* (1916) 33 T. L. R., 76. *Cf. Fairman's* case, *infra,* and Pollock on Torts, 12th Ed., at 522.
[84] *Fairman* v. *Perpetual Investment Building Society,* [1923] A. C., 74. Apparently the stricter duty enunciated in *Miller* v. *Hancock* is imposed in the United States where the landlord must maintain his premises in a reasonably safe condition for all visitors expressly or impliedly invited by the tenant, and owes the same duty to such visitors as to the tenant himself. See 36 Harv. L. Rev., 485 (note).

ties were exhaustively considered and the theory of implied contractual liability of the landlord to third persons coming on business with the tenant was definitely rejected and *Miller* v. *Hancock,* so far as it is inconsistent with *Indermaur* v. *Dames* and *Cavalier* v. *Pope,* was overruled. The duty to strangers using a common staircase when coming on business with a tenant is merely to refrain from exposing them to a concealed danger; nor is a landlord liable contractually to others than his tenants in respect of want of repair.[85]

VI. Duty of Occupier to Children.

General Rules Applicable to Children.—With certain modifications to be noted later, the principles of liability above stated apply equally to children as to adults suffering injury on the occupier's premises. The duty of an occupier to infant licensees or trespassers may be stated in the same words, *i.e.,* he must warn licensees of the existence of hidden dangers known to him, and must not intentionally injure or entrap trespassers. As was said by Farwell, L.J., in *Latham* v. *Johnson*:[86] "I am not aware of any case that imposes greater liability on the owner towards children than towards adults; the exceptions apply to all alike, and the adult is as much entitled to protection as the child." But in the application of the rules of liability account must be taken of the physical powers and mental faculties of the infant.

Infant Trespassers.—If the child is a trespasser on that part of the premises where the injury occurred he cannot recover in the absence of "any allurement with deliberate or malicious intent to injure" him or "any wilful act in reckless disregard of ordinary humanity towards him;" he trespasses at his own risk.[87] Thus in *Hardy* v. *Central Ry. Co.*[88] a child was deemed a trespasser, and held unable to recover for an injury sustained while playing on a moving staircase on which he knew he had no business to go.

Infant Licensees.—Difficult questions, however, arise where the child enters or uses the premises with the leave and license or tacit permission of the occupier. Towards such an infant licensee the occupier owes the duty of warning him against concealed dangers or traps known to him and not to the child. But this principle "must in any given case be applied with a reasonable regard to the physical

[85] *Vide,* 39 L. Q., R., 149; *cf. Kynock* v. *Bank of Montreal,* [1923] 3 D. L. R., 877.

[86] [1913] 1 K. B., 398 at 407.

[87] *Hardy* v. *Central Ry. Co.,* [1920] 3 K. B. at 467; *Latham* v. *Johnson,* [1913] 1 K. B., 411; *Coffee* v. *McEvoy,* [1912] 2 Ir. R., 290.

[88] *Supra; Jenkins* v. *Great Western Ry. Co.,* [1912] 1 K. B., 525.

powers and mental faculties which the owner, at the time he gave the license, knew or ought to have known the licensee possessed."[89] And so an occupier may be bound to take greater precautions in the case of a child than of an adult. The posting of a notice or the giving of a warning will excuse him only where he proves that such notice was understood or such warning was effectively brought home to the mind and intelligence of the child; a notice or warning which the child could not read or understand will not be sufficient.[90] Similarly in considering what is a "trap" or concealed danger it must be remembered that "trap" is a relative term and that dangers obvious to adults may be unappreciated by infants. "In the case of an infant, there are moral as well as physical traps. There may accordingly be a duty towards infants not merely not to dig pitfalls for them, but not to lead them into temptation."[91] Still the duty is not to make the premises safe for children, but merely one of reasonable care in respect of unusual dangers. Accordingly in *Latham* v. *Johnson*[92] the occupier escaped liability where a child injured itself whilst playing with a heap of paving stones in broad daylight, there being no trap and nothing inherently dangerous in the stones.

Inference of License.—Habitual entry and user of the land by children with the knowledge and acquiescence of the occupier may give them the[93] status of licensees, but they will remain trespassers if the occupier always drives them off and makes them aware that they have no business there.[94] And even where such a license can be inferred it protects them only when upon that part of the premises to which it extends; as to other parts they are trespassers.[95] The leading case of *Cooke* v. *Midland Ry. Co.*, as explained in subsequent cases,[96] was one in which the children entered upon the premises and played with the fatal turntable with the tacit permission of the occupier, and were therefore licensees. While the Courts have been astute to find evidence of a license from habitual acquiescence yet they incline to limit the permission to children able to take care of themselves and to hold that where the child is too young to understand danger the license ought not to be held to extend to such a child unless accompanied by a competent guardian.[97]

[89] *Cooke* v. *Midland Great West. Ry.*, [1909] A. C., 229 at 238.
[90] *Hardy* v. *Central Ry.*, *supra*, at 465; *Cf. Cooke* v. *Midland Ry.*, where a notice board conveyed no impression to the children.
[91] *Latham* v. *Johnson*, at p. 415.
[92] [1913] 1 K. B., 398; *Plawiuk* v. *Advance Co.* (1922), 70 D. L. R. 533.
[93] *Cooke* v. *Midland Ry. Co.*, *supra*; *Lowery* v. *Walker*, [1911] A. C., 10.
[94] *Hardy* v. *Central Ry.*, *supra*.
[95] *Jenkins* v. *Great West. Ry. Co.*, [1912] 1 K. B., 525.
[96] *E.g.*, *Glasgow Corp.* v. *Taylor*, [1922] 1 A. C., at 53; *Latham* v. *Johnson*, *supra*, *per* Hamilton, L.J.
[97] *Barchell* v. *Hickisson* (1880), 50 L. J. C. P., 101; *Schofield* v. *Mayor of Bolton* (1910), 26 T. L. R., 230; *Latham* v. *Johnson*, *supra*, at pp. 407, 414.

"Allurement" Cases.—Cases where children are injured through dangerous premises or agencies thereon are usually termed "attractive nuisance" or "allurement" cases, and it has been repeatedly argued that where an occupier has on his premises machinery or objects which are attractive and tempting to children his duty to them is thereby increased. It is submitted, however, that there is no distinct or higher positive duty imposed by law in respect to such allurements as such. His duty to trespassers is merely to refrain from wanton or deliberate injury, and children who are tempted to invade an occupier's premises because of some tempting object thereon cannot recover for injury sustained thereby: "It is hard to see how infantile temptations can give rights, however much they may excuse peccadilloes. A child will be a trespasser still if he goes on private ground without leave or right, however natural it may have been for him to do so."[98] In *Hardy* v. *Central London Ry. Co.*[99] a moving staircase outside a station was so attractive to children that they repeatedly used it in spite of being constantly warned off by officials, and yet they were held to be trespassers, there being no evidence of leave or license.

Extent of "Allurement" Doctrine.—The fact that the premises or objects thereon are attractive or alluring to children is an important factor, however, in deciding two issues: viz.: (*a*) The existence of a "trap," and (*b*) the presence of leave and license. As to (*a*) it has been said, " . . . the allurement may arise after he (a child) has entered with leave or as of right. Then the presence in a frequented place of some object of attraction, tempting him to meddle where he ought to abstain, may well constitute a trap, and in the case of a child too young to be guilty of contributory negligence it may impose full liability on the owner or occupier, if he ought, as a reasonable man, to have anticipated the presence of the child and the attractiveness and peril of the object . . . it must be a matter of law to say whether a given object can be a trap in the double sense of being fascinating and fatal."[100] Where, therefore, children are present on the premises with tacit permission, or as of right, and there is an alluring object on the land it becomes the occupier's duty to take some steps to counteract the attraction or to minimize the danger. This principle was applied in *Glasgow* v. *Taylor*,[101] where a boy died from eating the berries of a poisonous shrub in some public gardens in Glasgow. The berries were tempting and harmless

[98] *Latham* v. *Johnson*, *supra*, *per* Hamilton, L.J., at 415.
[99] [1920] 3 K. B., 459.
[100] *Latham* v. *Johnson*. [1913] 1 K. B., 398 at 416.
[101] [1922] 1 A. C., 44.

in appearance and constituted a concealed danger in a spot frequented by children; the defendant corporation was held liable for breach of its duty to give definite warning or to take adequate precautions to protect them against the danger. As to (*b*)—(the quality of allurement as a determinant of permission), Warrington, L.J., observed in the *Hardy* case:[102] "Much stress was laid in argument on the "allurement" afforded by the moving staircase. Such a fact may be material element in considering whether under all the circumstances leave and license is to be inferred, but where . . . leave and license is distinctly negatived, the fact cases to be relevant."[103]

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SUCCESSION DUTIES IN CANADA.

(*Concluded.*)

NATURE AND CONSTITUTIONALITY.

Part II: Constitutionality of the Tax.

In the United States of America the constitution requires that taxation must be uniform or without discrimination. None of the Canadian legislatures, Dominion or provincial, are subject to a restriction of this character. In case of the abuse of the powers of taxation or other powers possessed by these legislatures, the only remedy is an appeal to the electorate.[30]

Under the provisions of section 92 of the British North America Act, the taxing powers of provincial legislatures are subject to two express limitations, namely:

1. The taxation must be direct; and
2. It must be within the province.

[102] [1920] 3 K. B., at 470.

[103] The duty of occupiers to children was considered in the following Canadian cases:

Pedlar v. *Toronto Power Co.* (1913), 15 D. L. R., 684; affirmed 19 D. L. R., 441; *Robinson* v. *Village of Havelock* (1915), 20 D. L. R., 537; 32 Ont. L. R., 25; *Vick* v. *Morin* (1915), 22 D. L. R., 29; 30 W. L. R., 412; *Geall* v. *Dominion Creosoting Co., Ltd.* (1916), 55 Can. S. C. R., 587; *Fulton* v. *Randall* (1918), 3 W. W. R., 331; (application of *Cooke* v. *Midland Ry.* to trespassing horses); *McLean* v. *Y. M. C. A.* (1918), 3 W. W. R., 522; *Shilson* v. *Northern Ontario Light & Power Co.* (1919), 48 D. L. R., 627; affirmed in Supreme Court of Canada (1920), 50 D. L. R., 696; 59 Can. S. C. R., 443; *Burbridge* v. *Star Mfg. Co.* (1921), 56 D. L. R., 658; *Wallace* v. *Pettit*, 25 Ont. W. N., 364.

The American cases on this subject are collected and discussed in learned articles in (1898) 11 Harv. L. Rev., 349; (1923) 36 Harv. L. Rev., 826; (1923) 57 Amer. L. Rev., 321, and 875.

[30] Fisheries Case (1898) A.C. 700; 67 L. J. P. C. 90.