Allurement

An occupier of land or premises who has upon those premises something which can be regarded as an "allurement" may thereby be imposing upon himself an additional duty of care. That additional duty of care arises because of the temptation which is offered to children by that allurement. Although an adult is presumed to be able to appreciate those things which might injure him, a child may be so attracted as to be completely oblivious to the danger to which he is exposed.

The duty of care owed to a child, like that owed to an adult, depends upon whether the person on another's premises is a trespasser, a licensee, or an invitee. To the child trespasser an occupier owes no greater duty than he does to an adult in the same category. It is thus stated by Viscount Dunedin in **Addie v. Dumbreck: (1)**

> "The truth is that in cases of trespass there can be no difference in the case of children and adults, because there is no duty to take care that can vary according to who is the trespasser."

The Supreme Court of Canada following **Addie v. Dumbreck** (infra) has similarly held in **East Crest Oil Co. v. R.** (2). It was there stated by Estey J., Kerwin J. concurring:

> "It is sometimes suggested that a landowner is under an obligation to take special precautions with respect to children, but so long as the children remain trespassers the law seems to be settled that in principle there is no diffrence between a child and an adult."

The doctrine of allurement, therefore, has no place where the injured child is a trespasser on the property. Where the child is a licensee or invitee, however, allurement may have a very important place. The general philosophy behind the increased liability to children is thus stated by Lord Macnaughton in **Cooke v. Midland G. W. Rly. of Ireland (3):**

> "Persons may not think it worth their while to take ordinary care of their own property, and may not be compellable to do so; but... if they allow their property to be open to all comers, infants as well as children of maturer age, and place upon it a machine attractive to children and dangerous as a plaything, they may be responsible in damages to those who resort to it with their tacit permission, and who are unable, in consequence of their tender age, to take care of themselves."

In this case, which is generally regarded as the introduction of the doctrine of allurement, the attractive and dangerous object was a railway turntable on the defendant's land. It was proved that to the knowledge of the defendant's servants both children and adults frequented the land and that children were in the habit of playing on the turntables. The held accordingly.

(1) (1929) A.C. 358 at 376
(2) (1945) S.C.R. 191 at 200
(3) (1909) A.C. 229 at 236

jury held that the railway company was negligent in not taking steps to put a stop to the practice of children playing with the turntable altogether or in not taking steps to prevent such an accident as that which occurred. The House of Lords supported the decision of the jury and held accordingly.

The Cooke case established the place of "allurement" in our scheme of law. Later cases leave no doubt but that one who brings an allurement onto his property thereby brings upon himself an additional duty of care towards children who might be injured by it. The difficult question to be answered, however, is just what constitutes an allurement:

> "It does not cover all objects with which children may hurt themselves, and it is a question of fact whether the fascinating and fatal object is to be regarded as an allurement."

Per Middleton, J. in **Pedlar v. Toronto Power Co.** (4).

The famous case of **Cooke v. Midland G. W. Rly.** (5) was followed by **Glasgow Corporation v. Taylor** (6) where the allurement was poisonous berries in a public park, where the injured child was regarded as a licensee on the property – perhaps even an invitee.

Several Canadian cases also provide examples of these fascinating and fatal objects. A wheel with an unguarded shaft driven at the rate of 200 revolutions a minute and a stream of water flowing through the premises were held by the N.S. Court of Appeal to be allurements to children (7); so also an empty gasoline drum left on the highway was held to be an allurement (8) and a crate left leaning in a dangerous position was held to be a lure to the boy who was injured when he caused it to fall upon him (9). A pile of timber left on a public street was held to be an allurement to children, even in 1900 (10) and the municipality was held liable for injuries suffered by the child.

We have observed earlier in this paper the general statement that in the case of a child trespasser, no greater duty is owed to that child than would be owed to an adult trespasser. That is so once the child has been found a trespasser but in deciding the question of whether he is a trespasser or not, the allurement or dangerous and fascinating thing is taken into consideration. And since an adult is presumed to know whether the fascination is dangerous or not, we face the situation that in exactly similar circumstances an adult might be a trespasser while a child would not.

"Allurement" says Lord Goddard "only means a form of invitation." (11) Riddell, J., in the Ontario Court of Appeal put it this way:

> " 'Allurements', 'attentions', 'implied invitations', 'implied licenses', etc., have been relied upon in some cases to fasten liability upon a landowner in respect of an infant coming upon the land; and the cases shew that, if the landowner place or leave upon his land anything that

(4) (1913) 15 D.L.R. 634 at 688
(5) (1909) A.C. 229
(6) (1922) 1 A.C. 144
(7) Burbridge v. Starr Mfg. Co. (1921) 56 D.L.R. 658
(8) Fergus v. Toronto (1932) 2 D.L.R. 807
(9) Clement v. Nor. Navigation Co. (1918) 43 O.L.R. 127
(10) Ricketts v. Markdale (1900) 31 O.R. 610.
(11) Edward v. Railway Executive, (1952) 2 A.E.R. at 437

would naturally attract children to come upon his land without taking efficient means to keep them off, he may therefore be held to have invited or licensed them to come upon his property—and consequently they cease to be trespassers and become invitees or licensees with all the rights of express invitees or licensees . . ." (12)

A recent English case, **Edwards v. The Railway Executive** (13) gave rise to some discussion on this allurement problem by the House of Lords. In that case, a child went through an opening in a fence onto an electric railway track in search of a ball which had been thrown there. The child slipped on the rails and was run over by a train. There was an embankment within the fence on which children had been accustomed to sliding, and to gain access to that embarkment the children had habitually broken the fence. Each time it was repaired as soon as discovered. In these circumstances, it was alleged that the toboggan slide constituted an allurement and that therefore the defendant was liable. It was held, however, that the children must be regarded as trespassers and the action failed. The company was not bound to take every possible step to keep out intruders, but only enough to show that it resented and would try to prevent the intrusion.

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(12) Wallace v. Pettit (1923) O.L.R. 82 (C.A.)
(13) (1952) 2 A.E.R. 430