

for injury to a child, for leaving dangerous explosives accessible to children, as a single torpedo unguarded on a railroad track, *Harriman v. Railroad Co.*, 45 Ohio St. 11. This is known as the doctrine of constructive invitation, and the courts thus holding declare that if the person is allured or tempted by some act of a railroad company to enter upon its lands, he is not a trespasser, but is there by the invitation of the company, and therefore the rule as to trespassers does not apply, and the company owes him the same duty that it would owe any other invited guest." "The viciousness of the reasoning," said the Court of Appeals of New Jersey, in the case of *Delaware, etc., Ry. Co. Reich*, supra, in discussing this question "which fixes liability upon a landowner because the child is attracted, lies in the assumption that what operate as a temptation to a person of immature mind is, in effect, an invitation. Such an assumption is unwarranted." As said by Mr. Justice Holmes, "Temptation is not always invitation. As the common law is understood by the most competent authorities, it does not excuse a trespass because there is a temptation to commit it or hold parties bound to contemplate infractions of property rights, because the temptation to unformed minds to infringe them might have been foreseen."

The Virginia court in repudiating this artificial reasoning, says in *Walker's Adm'r. v. Railway*, supra: "No one believes that a landowner as a matter of fact, whether a railroad company or a private individual, who makes changes on his own land in the course of a beneficial user, which changes are reasonable and lawful, but which are attractive to children, and may expose them to danger if they should yield to the attraction, is by that act alone inviting them upon his premises." This doctrine of constructive invitation has been utterly rejected by the highest courts of New Hampshire, Massachusetts, New York, New Jersey, Rhode Island, Michigan, Virginia and West Virginia.

So that in the final analysis we find the tendency to be against the doctrine of the turntable cases, though respectable