The judgment of the Court was delivered by MEREDITH, C.J. O. (after stating the facts and the findings of the jury) :—There is no doubt that the excavation made by the appellant constituted a nuisance, but no case is made on the pleadings and there is no finding of the jury that the nuisance was the cause of the accident, and there is no evidence that would warrant such a finding.

The right of the respondent to recover must, therefore, depend on his having established that in the circumstances the appellant owed a duty to the children which it failed to perform, and that their death was occasioned by that failure.

The respondent's counsel relied on Cooke v. Midland Great Western Railway of Ireland, [1909] A.C. 229; but, assuming that the finding of the jury that the appellant invited the children to use the gravel-pit is warranted by the evidence—and I think it is not—the answer to the second question is fatal to the respondent's case. In the Cooke case, the plaintiff would have failed but for the conclusion that was reached that the defendant knew that it was placing or leaving in the way of boys and children, a temptation alluring to them and dangerous in its nature, and with which it was not improbable that they would come in contact. It was upon this knowledge that, in the opinion of Lord Atkinson, "the liability of the owner is at bottom based" (pp. 238-9.)

The Cooke case has been considered by the Court of Appeal in Latham v. R. Johnson & Nephew Limited, [1913] 1 K.B. 398, and the Court there came to the conclusion that no new law was laid down or intended to be laid down in the earlier case, and pointed out that all that was decided in that case was that the defendant had put in a place open to their licensees a thing dangerous *in itself*, and that there was, therefore, cast upon the defendant a duty to take precautions for the protection of others who will certainly come into its proximity: per Farwell, L.J., at p. 408. Hamilton, L.J. (p. 416), says: "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. On the other hand, the allurement may arise after he 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 capable of contributory negligence it may impose full liability on the owner or occupier, *if he ought, as a reasonable man, to have anticipated*