

to the measurements at the trial. The trial Judge thereupon dismissed the action.

It is from this judgment the appeal is taken. Three points are argued: 1st, that the archways were not high enough; 2nd, that the difference in height between the archways was a trap, and 3rd, that the evidence of the deceased's admission was either not receivable at all or in any event was matter referable to contributory negligence and should have been submitted to the jury.

The deceased was lawfully upon the premises of the defendants for a purpose of common interest, namely, to obtain a load of laths purchased by his employer from them. The duty of the owner of the premises under such circumstances "is to take reasonable care to prevent injury" to the invitee "from unusual dangers which are more or less hidden of whose existence the occupier is aware, or ought to be aware, or in other words to have his premises reasonably safe for the use that is to be made of them." Volume 21, Halsbury's Laws of England, p. 388; *Thomas v. Quartermaine*, 18 Q. B. D. 697.

The class to which the customer belongs includes persons who go not as mere volunteers, or licensees, or guests, or servants, or persons whose employment is such that danger may be considered as bargained for, but who go upon business which concerns the occupier, and upon his invitation, express or implied.

And with respect to such a visitor at least, we consider it settled law, that he, using reasonable care on his part for his own safety, is entitled to expect that the occupier shall on his part use reasonable care to prevent damage from unusual danger, which he knows or ought to know; and that where there is evidence of neglect, the question whether such reasonable care has been taken, by notice, lighting, guarding, or otherwise, and whether there was contributory negligence in the sufferer, must be determined by a jury as matter of fact;" *Indermaur v. Dames*, L. R. 1 C. P. 274 at 288.

In *Lowery v. Walker*, [1910] 1 K. B. 173, at 183, [1911] A. C. 10, Vaughan Williams, L.J., puts it in this way: "Another class of case is that in which the plaintiff was upon the defendant's premises, not by virtue of any grant of a right, but by invitation of the defendant. In those cases the plaintiff is not a trespasser, and there is a duty on the part of the defendant towards him. In such cases a duty exists