And in Sturgis v, Wavecrest Realty Co, (1933) 124 Neb. 769, 248 N.W. 78, the owner of a bathing resort was held not liable for injuries received by a bather in diving into shallow water from a water-wheel platform which was not designed for diving purposes. The plaintiff, a grown man, had previously dived from a diving tower, which was in a deeper part of the lake and farther from the shore, and had gone over the water-wheel several times before the accident.

It may be of interest to call your attention to a recent decision of the Supreme Court of Illinois in a case involving the operation of a swimming pool by a municipality. The opinion in this case (Gebhardt v. Village of LaGrange Park 354 Ill. 234) was written by Judge Stone and was rendered by the Supreme Court on October 21, 1933. The principal question discussed was whether the operation of a swimming pool is a governmental or a proprietary function. The court said that if it be a governmental function the doctrine of respondeat superior has no application, and that the village would not be liable for damages arising out of the negligence of its servants in that function, whereas, if the function be a proprietary one the village would be liable for damages resulting from the negligence of its servants in the operation of the pool. The court said that there is substantial contrariety of opinion in the courts of last resort in this country on this question; that Colorado, Missouri, New York, Pennsylvania and West Virginia held that the operation of a swimming pool by a municipality is not a governmental but a proprietary function and that the States of California, Kansas, Georgia, Kentucky, Massachusetts, Michigan, Minnesota, Nebraska, New Jersey, Rhode Island, Connecticut, Tennessee, Washington, Wisconsin and Iowa take the opposite view. The court concluded that the latter view was supported by the better reasoning and the weight of authority and reversed the judgment for the plaintiff who was injured while being conveyed, with a number of other children, from a swimming pool operated by the village, which also provided transportation to and from the pool, located about eight miles outside the village limits. The opinion of the court was not unanimous, however, as Justices Herrick and Farthing dissented, saying: "We do not think that this is a governmental function." My own view is that the better reasoning supports the latter view.

To summarize:

In the operation of a natatorium or swimming pool for profit, the operator is bound by the ordinary rules of negligence. It is his duty to be reasonably sure that he is not inviting patrons into danger and to exercise ordinary care for their safety. What constitutes the exercise of ordinary care varies with the situation and circumstances of each particular case. Regard must be had for the fair adaptability of the contrivances and facilities for their customary or reasonably anticipated use. This involves the duty of being diligent to see that the water in the pool is of sufficient depth to make it reasonably safe for the purpose, or if it be unsafe for that sport with the use of the facilities furnished, there arises the duty to warn or caution patrons by signs or otherwise of the hazards, particularly of any latent or hidden condition of danger, and injuries sustained in consequence of a failure to perform this duty are compensable. This grows out of the general rule of negligence that where a person provides accommodations of a public nature, he is required to use reasonable care and diligence in furnishing and maintaining such accommodations in a reasonably safe condition for the purpose for which they are apparently designed and to which they are adapted. If, for any reason, the accommodations are not reasonably safe and suitable for the purposes for which they are ordinarily used in a customary way, then the public should be excluded entirely, or appropriate notice of the unsafe and unsuitable condition should be given and persons warned of the dangers in using them.