

did not constitute actionable negligence. The court said: "The springboard and the water beneath and about it constituted the diving and swimming accommodations. It was in law the duty of the defendant to exercise proper care, precaution and diligence to provide and maintain a reasonably suitable and safe springboard and water of reasonably suitable and safe depth under and about the springboard, free from obstructions or other dangers to comfort and safety in the ordinary and customary use of such a diving and swimming place. If the water was in fact of such a depth as to make diving from the springboard into the water beneath, in the usual, ordinary and customary manner, unsafe in the particulars alleged and no appropriate notice or warning was given of the unsafe or unsuited condition of the diving place and the decedent was, because of such unsafe or unsuited accommodations being negligently furnished, injured while properly using the accommodations in a customary and appropriate manner in diving from the springboard in his customary way, without fault on his part, a cause of action for compensatory damages exists under the statute in favor of the plaintiff, if the decedent could have maintained an action for the same injury had his death not resulted therefrom Where a party maintains a bathhouse or a diving or swimming place for the use of the public for hire and negligently permits any portion of the same or its appurtenances, whether in the house, or the depth of the water, or in the condition of the bottom, or in things thereon, to be in an unsafe condition for its use in the manner in which it is apparently designed to be used, a duty imposed by law is thereby violated; and if an injury to another proximately results from a proper use of the same, without contributory negligence, a recovery of compensatory damages may be had."

In Barnes v. Honey Grove Natatoriums, (1921) - Tex. Civ. App., 228 S.W. 354, it was held that there was sufficient evidence to justify a finding of contributory negligence, and that a judgment for the defendant should be affirmed, in an action for the death of the plaintiff's sixteen-year-old son in the defendants' swimming pool, which was about 50 feet wide by 100 feet long, was of concrete, and sloped gradually from one end, at which the water was only about 18 inches deep, to the other end where it was about 9 feet deep, where there was testimony to the effect that the boy, who was an inexperienced swimmer, had been told by another boy with whom he spoke about "kind of cramping", to get out on the bank and wait until he felt differently. The case was treated as tho the party who was drowned were an adult, no complaint being made to the instructions on this ground. The court said that, treating the case as one in which the ordinary rule with reference to contributory negligence was applicable, it was plain that the jury were warranted in finding that the plaintiff's son was guilty of contributory negligence; that they had a right to conclude that the boy discovered, during the half hour he was in the pool before he had the conversation in question, that the water therein became gradually deeper, and knew and realized the danger to a person who was not a good swimmer, or even to an expert swimming, in using it after he discovered that he was cramping; and that the jury might conclude that an ordinarily prudent person under these circumstances would not have gone back into the pool, as the youth did after he had the conversation in question. The court expressed the opinion that a finding that the defendants were guilty of gross negligence would not have been warranted, where it appeared that they had exercised some care for the safety of persons who used the pool, by providing handrails along the end where the water was deepest and for a distance of about 40 feet along the sides from that end and by placing chains across the pool at points where the water was about 2 feet deep and also where it was about 3½ feet deep, although it did not appear that they had employed attendants charged with the duty specifically of looking after the safety of persons in the water.

A person constructing a toboggan slide to be used by the public for a consideration at a bathing resort is bound to anticipate and provide against injuries from defects in construction, to the extent that reasonably prudent men