relation, he might never be able to do so, however just and meritorious a case he might have on account of the negligent operation of the vehicle."

The trial court in the principal case seemed disturbed by the fact that heretofore in Missouri the presumption had only been applied to trucks, while here a passenger vehicle was involved. The St. Louis Court of Appeals said that it can see no substantial difference between trucks and passenger vehicles in this respect, and that the rule should apply equally to both. It reached the same conclusion in *Jacobson v. Beffa*, 282 S. W. 161. This search has disclosed only one court which makes such a distinction. Pennsylvania courts will raise the presumptions when the vehicle is a truck, but refuse to do so when passenger vehicles are involved. *Sieber v. Russ Bros. Ice Cream Co.*, 276 Pa. 340 and cases there cited. It seems to the writer that the reason given in *Baker v. Mashee, supra,* applies to both trucks and passenger vehicles with equal force. There is the same necessity for the rule in both cases, and the Missouri court seems justified in extending it to include passenger vehicles.

R. B. S. '30.

NEGLIGENCE—LIABILITY OF CONTRACTOR—USING PUBLIC STREET.—Defendant was engaged in the construction of a building abutting on a public street and had erected a shed over the sidewalk in accordance with provisions of the building code leaving unguarded steps leading to the roof of the shed which were used in building operations. Plaintiff, a young boy, fell off of the top of the steps while playing on the structure. The accident would probably not have occurred had a railing been constructed on the steps. A watchman who was employed to keep children off was absent. *Held,* since use of a sidewalk was not unlawful and not inherently dangerous, the contractor was under no affirmative duty to make the place entirely safe for children or to protect them against ordinary hazards of boyhood. *O'Callaghan v. Commonwealth Engineering Corp.*, 159 N. E. 884, (N. Y., 1928).

The court went on the theory that the steps and absence of railing created no danger which caused injury to any pedestrian, that no invitation, express or implied, was held out to the public to climb the steps, and that the defendant was under no duty to exercise care so that the steps might be rendered safe for any person who chose to use them without invitation or permission.

Where the highway is obstructed under license, the person responsible therefore is chargeable only with ordinary care to see that the obstruction does not cause injury to persons lawfully using the highway. *Stockton Automobile Co. v. Confer,* 154 Cal. 402, 97 Pac. 881. One constructing a building adjacent to a sidewalk owes to pedestrians the duty of exercising care for their protection. *Holmquist v. C. L. Gray Constr. Co.*, 169 Iowa 502, 151 N. W. 828. Accordingly it would seem that the defendant is not liable for injuries sustained in the course of ordinary boyhood play when the structure itself is neither inherently dangerous nor an attractive nuisance. The decisions seem to indicate that it is a question for the jury as to whether or not a structure is dangerous, and, in the absence of a finding that it is dangerous, liability attaches only on proof of negligence. *R. G. Lassiter & Co. v. Grimstead,* 132 S. E. 709, (Va.); *Soricro v. Pennsylvania R. Co.*, 86 N. J. L. 642, 92 Atl. 604. Contractors doing work in or adjacent to public ways are not made insurers of the safety of children playing in the vicinity. In accord with the principal case is *Reilly v. Barber Asphalt Paving Co.*, 155 App. Div. 108, 140 N. Y. S. 16, in which a small boy went to the edge of the sidewalk and was severely burned when he fell into hot asphalt. The court held defendant not negligent in not having a guard stationed at that place.

It would seem, therefore, that the court was correct in holding the defendant under no affirmative duty to make the structure entirely safe for trespassing children under the circumstances of the case. W. V. W., '30.