

nowise better entitled than railways or insurance companies or any other corporation) transferring the trial of certain actions for negligence from a jury to a Judge, it occurs to me, that the finding of fact of their chosen tribunal ought to be viewed with at least as much respect as that which is accorded to the finding of a jury, and unless we are prepared to hold, as a matter of law, that the depression or hole, which existed here, was not an actionable defect in the highway, the judgment ought to be upheld. I do not know of any Canadian cases which would compel us to so hold. There is at least one in the U. S. which would probably go that far, *Burroughs v. Milwaukee*, *supra*, but in considering these authorities, regard must always be had to the law relating to, and standard of maintenance of, highways of the particular place or state. I do not feel called on to generalize further in the present case. Whether the plaintiff using the highway was exercising ordinary care, was also a question of fact for the Judge. Proceeding on a way known to be defective is not necessarily inconsistent with reasonable care. A pedestrian is not guilty of negligence merely because he walks on the roadway, and he may cross a street at any point without waiting to reach a crossing: *Boss v. Litton*, *supra*, *Beven on Negligence*, Vol. 1, p. 659, *Thompson on Highways*, 1881, p. 441. In my opinion the appeal ought to be dismissed.

Appeal allowed with costs, and action dismissed with costs.

Lee, Farmer, & Stanton, Hamilton, solicitors for plaintiff.

Farmer & Long, Hamilton, solicitors for defendants.

FERGUSON, J.

FEBRUARY 15TH, 1902.

TRIAL.

BURKE v. BURKE.

*Master and Servant—Liability of Master for Act of Servant—Trespass to Person — Forcible Removal of — By Owner from his House—Unnecessary Force—Continuation of After Removal—Continuous Act—Solicitor—Damages by Jury for Specific Acts — General Damages besides on Erroneous Assumption of Liability—Effect of.*

Action, tried at London with a jury, brought to recover damages for assault by defendants, and for ejecting plaintiff from the house of M. J. Burke, an American Consul, at the city of St. Thomas, and using unnecessary violence in so doing.