

cases tried by a Judge alone, than in cases with a jury, *inter alia*, by reason of the expense and uncertainty, in the latter case, of a new trial, and I see no good reason why we should hesitate to review the judgment of a judge in a case against a municipality more than in any other case. . . . With the greatest possible respect I must express my opinion, that the finding, that this hole or depression is a breach of statutory duty to keep in a reasonable state of repair, carries the liability of corporations many degrees further than it has ever been carried before, and seeks to impose upon them a standard of perfection far beyond the reasonable state of repair which is the measure of their duty under the statute. The Judge below appears to have erred as to the standard, by basing it upon the decisions referred to at p. 911 of 2nd Edition of Elliott on Roads and Streets. All of which are founded on a dictum of Lord Denman's, at *Nisi Prius*, in *Boss v. Litton*, 5 Car. & P. at p. 408. . . . It does not at all follow from his language that there is a duty to keep carriage-ways and ways for foot passengers up to the same standard. . . . The degree of repair in which each is to be kept is to be measured by the use for which it is intended. The carriage-way was not out of repair, and it is erroneous to hold that it must be kept so as to ensure foot passengers against accident. That is a mistake in view of Lord Denman's remarks. . . . And so when the Judge below held that the carriage-way was not improperly kept, so far as vehicles are concerned, I think he put the plaintiff out of Court. Moreover, after a careful review of the evidence, I am of opinion that it is impossible to say that the condition of this roadway was such as to lead any reasonable man to foresee the remotest chance of danger to any person, either on foot or in a carriage, from the hole, and, therefore, the defendants were not guilty of negligence with respect to it: *Ewing v. Toronto*, 29 O. R. 197, *Burroughs v. Milwaukee*, 86 North West Reporter 159. . . . Because the line between a dangerous defect and one not dangerous is a difficult or impossible one to define, and a hard and fast rule cannot be laid down, it does not follow that the finding of the trial Judge must be accepted. We cannot, by such reasoning, refuse the responsibility of dealing with each case upon its own merits. . . . We are bound in each case to enquire, whether the defect in question was one from which a reasonable man would have apprehended danger.

The appeal should be allowed.

FALCONBRIDGE, C.J.—Inasmuch as the municipalities have secured legislation (to which they would seem to be in